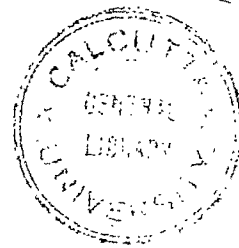


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THE TWENTY-SIXTH YEAR OF THE WORLD COURT *

By MANLEY O. HUDSON

If the twenty-sixth year of the World Court has not been one of intense activity, it has been marked by events of some significance for the future. The single session held by the Court during the year was devoted to administrative questions, largely to those growing out of the reorganization of the previous year. One proceeding was instituted before the Court, the first since its reorganization, and the Court was seized of one request for an advisory opinion emanating from the General Assembly. Some progress was made in the extension of the Court's jurisdiction, and a series of resolutions concerning the Court was adopted by the General Assembly on November 14, 1947.¹

The Session of 1947

The provision in Article 23 of the Court's Statute that it "shall remain permanently in session, except during the judicial vacations," has never been of more than formal significance. Actually, the Judges are convoked to sit at The Hague only as there is need for them to do so. The meeting held from April 3 to May 6, 1946, was devoted to problems of the reorganization; the meeting held from February 11 to March 14, 1947, was devoted to administrative questions consequent upon the reorganization. Regulations for the Staff of the Registry were adopted, plans for the printing and distribution of the Court's publications were approved, a budget was proposed for 1948, a *laissez-passer* for the Judges was formulated; and certain appointments were made to the Staff of the Registry. The Court also constituted its Chamber for Summary Procedure for one year from May 3, 1947; it will consist of President Guerrero, Vice-President Basdevant, and Judges McNair, Krylov and Hsu Mo as members, with Judges de Visscher and Hackworth as alternates.

The Corfu Channel Case

By an application transmitted to the Court on May 22, 1947, the United Kingdom of Great Britain and Northern Ireland instituted a proceeding against the People's Republic of Albania, setting forth the claim of the Government of the United Kingdom

(1) that the Albanian Government either caused to be laid, or had knowledge of the laying of, mines in its territorial waters in the Strait

* This is the twenty-sixth in the writer's series of annual articles on the World Court, the publication of which was begun in this JOURNAL, Vol. 17 (1923), p. 15.

¹ *Journal of the General Assembly*, 2d Session, No. 53, pp. 8-9.

of Corfu without notifying the existence of these mines as required by Articles 3 and 4 of Hague Convention No. 8 of 1907, by the general principles of international law and by the ordinary dictates of humanity;

(2) that two destroyers of the Royal Navy were damaged by the mines so laid, resulting in the loss of lives of forty-four personnel of the Royal Navy and serious injury to the destroyers;

(3) that the loss and damage referred to in (2) was due to the failure of the Albanian Government to fulfil its international obligations and to act in accordance with the dictates of humanity;

(4) that the Court shall decide that the Albanian Government is internationally responsible for the said loss and injury and is under an obligation to make reparation or pay compensation to the Government of the United Kingdom therefor; and

(5) that the Court shall determine the reparation or compensation.²

Annexed to the application was a copy of a note³ addressed to the Albanian Government by the British Ambassador at Belgrade, on December 9, 1946; the applicant relied on this note as setting forth the subject of the dispute, a succinct statement of the facts, and the grounds on which the claim was based.

To establish the jurisdiction of the Court, the applicant contended that the case involved a matter "specially provided for in the Charter of the United Nations," under Article 36 (1) of the Statute, on the following grounds:

(1) the resolution of the Security Council of April 9, 1947, which read as follows:⁴

The Security Council,

Having considered statements of representatives of the United Kingdom and of Albania concerning a dispute between the United Kingdom and Albania, arising out of an incident on 22 October 1946 in the Straits of Corfu, in which two British ships were damaged by mines with resulting loss of life and injury to their crews,

Recommends that the United Kingdom and the Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court.

(2) that in accepting the invitation of the Security Council to participate in the discussion of the dispute the Albanian Government accepted in this case a condition laid down by the Security Council in the invitation itself that Albania should have "all the obligations which a Member of the United Nations would have to assume in a similar case."⁵

² Court Document, Distr. 151, 1947.

³ Security Council, *Official Records*, 2d Year, Supp. No. 3, p. 36.

⁴ Security Council, *Official Records*, 2d Year, No. 34, pp. 726-727.

⁵ The texts of the invitation and of Albania's reply are published in Security Council, *Official Records*, 2d Year, No. 7, p. 131.

(3) that under Article 25 of the Charter Members of the United Nations are bound to accept and carry out the decisions of the Security Council.

By this developed argument, the applicant contended that the recommendation to the two parties to the dispute enabled the United Kingdom alone to institute the proceeding by application.

The application was promptly communicated to the Albanian Government which, in its reply of July 23, 1947, took the position that the Government of the United Kingdom had not proceeded in conformity with the Security Council Resolution of April 9, 1947, and that neither the Statute nor Article 25 of the Charter nor general international law justified the procedure followed. In these circumstances, the Albanian Government declared that it would be entitled to consider that the Government of the United Kingdom could not validly bring the case before the Court. The text of the reply is not presently available to the writer; according to the Court's unofficial Communiqué No. 16, the Albanian Government accepted the recommendation of the Security Council and stated that it was prepared to appear before the Court; but it made the most explicit reservations regarding the manner in which the Government of the United Kingdom had brought the case before the Court and emphasized that its acceptance of the Court's jurisdiction in the present case could not constitute a precedent for the future.

The United Kingdom appointed as its agent W. E. Beckett, Legal Adviser to the Foreign Office; Albania appointed as its agent Kahreman Ylli, Albanian Minister in Paris.

On July 31, 1947, the President of the Court issued an order fixing time-limits as follows: for the memorial of the Government of the United Kingdom, October 1, 1947; for the counter-memorial of the Albanian Government, December 10, 1947. The form of this order seems to indicate that the United Kingdom is to be considered as applicant, and Albania as respondent; in other words, the parties' communications were not taken to embody a special agreement between them, in which case the same date would have been fixed for the filing of the two parties' memorials. Normally a further order might be issued fixing time-limits for the presentation of a reply and a rejoinder; as the situation has developed; it may become necessary to fix another time limit for the respondent's memorial.

It is to be noted that the Security Council has not set any conditions for the Court's being open to Albania, a State not a Member of the United Nations, as prescribed by Article 35 (2) of the Statute; but the President's order of July 31, 1947, stated that having regard to the Security Council's resolution the Albanian note was to be taken "as constituting the document mentioned in Article 36 of the Rules of Court."

The applicant's memorial was filed within the time-limit fixed. On December 9, 1947, the Albanian agent filed with the Registry a preliminary objection to the application of the Government of the United Kingdom on

the ground of inadmissibility; the Court was asked (1) to place on record that, in accepting the Security Council's recommendation of April 9, Albania undertook only to submit the dispute to the Court in accordance with the provisions of the Statute, and (2) to give judgment that the application of the Government of the United Kingdom was inadmissible for lack of conformity with the provisions of Articles 40 (1) and 36 (1) of the Statute. In an order of December 10, 1947, the President fixed January 20, 1948, as the time-limit within which the United Kingdom might submit its observations on the preliminary objection.

Interpretation of Article 4 of the Charter

Considerable dissatisfaction has been voiced in the General Assembly over the failure of the Security Council to recommend certain States which had applied for membership in the United Nations. It has seemed that some States represented in the Security Council have set as a condition of their voting for a recommendation of a State that other States should also be recommended. Article 4 of the Charter provides:

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

On November 17, 1947, the General Assembly adopted the following resolution:⁶

THE GENERAL ASSEMBLY,

--- CONSIDERING Article 4 of the Charter of the United Nations,

CONSIDERING the exchange of views which has taken place in the Security Council at its two hundred and fourth, two hundred and fifth and two hundred and sixth meetings, relating to the admission of certain States to membership in the United Nations,

CONSIDERING Article 96 of the Charter,

REQUESTS the International Court of Justice to give an advisory opinion on the following question:

Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?

⁶ Document A/471, p. 6; *Journal of the General Assembly*, 2d Session, No. 56, p. 4.

The Secretary-General is instructed to place at the disposal of the Court the records of the above-mentioned meetings of the Security Council.

This is the first time that the Court has been asked to give a direct interpretation of the Charter. In opposing the request to the Court, certain States took the view that power to interpret the Charter does not fall within the Court's competence, reliance being placed on a report adopted by the San Francisco Conference of 1945.¹

On December 12, 1947, the President of the Court gave an order fixing February 9, 1948, as the time-limit within which written statements relating to the question may be filed by States entitled to appear before the Court, without prejudice to oral statements which might later be made.

States Parties to the Statute of the Court

The admission of Pakistan and Yemen to membership in the United Nations during the year 1947 increases to fifty-seven the number of States parties to the Statute.

At the close of the year, no State not a Member of the United Nations had become a party to the revised Statute. Switzerland had not effected its accession to the Statute of the Court on the conditions set by the General Assembly on the recommendation of the Security Council, on December 11, 1946; this action had been proposed, however, in a message (Doc. 5222) of the Swiss Federal Council of July 8, 1947, addressed to the Federal Assembly. The Federal Council also proposed that Switzerland accept the compulsory jurisdiction of the Court. It seems that certain passages in the report (Doc. A/239) adopted by the General Assembly on December 11, 1946, may have given some concern to Swiss opinion.² The particular passage in the report to attract Swiss attention seems to be the following:

The obligations imposed by Article 94 [of the Charter] upon a Member of the United Nations should, in the opinion of the Committee, apply equally to non-Members of the United Nations which become parties to the Statute and to non-parties which are allowed access to the Court. In the opinion of the Committee, the obligations of a Member of the United Nations under Article 94 include the complementary obligations arising under Articles 25 and 103 of the Charter insofar as the provisions of those articles may relate to the provisions of Article 94, and non-Members of the United Nations which become parties to the Statute (and non-parties which have access to the Court) become bound by these complementary obligations under Articles 25 and 103 in relation to the provisions of Article 94 (but not otherwise), when they accept "all the obligations of a Member of the United Nations under Article 94."

¹ Report of Committee 2 of Commission IV on Interpretation of the Charter in Document 887, IV/2/39, 9 June 1945.

² See the writer's analysis in this JOURNAL, Vol. 41, p. 866.

In commenting on the problems thus raised for Switzerland, the Swiss Federal Council analyzed the various Articles of the Charter and reached the following conclusions:

Par conséquent si la Suisse accepte toutes les obligations découlant pour un Etat membre de l'article 94, alinéa 2, elle ne s'engage pas à prêter son appui au conseil de sécurité lorsqu'il s'agit de l'exécution d'un arrêt rendu entre Etats tiers. Les seuls cas qu'elle ait à envisager sont ceux où elle serait partie à un procès devant la cour et où elle-même ou l'autre Etat n'exécuterait pas l'arrêt. Dans l'une et l'autre hypothèse, elle peut éviter l'intervention du conseil de sécurité, soit en exécutant l'arrêt conformément à l'obligation qu'elle a assumée à cet égard, soit en renonçant à recourir au conseil de sécurité si l'autre Etat n'exécute pas l'arrêt.

On pourrait sans doute soutenir que l'article 94, alinéa 2, en raison même de son imprécision, est susceptible d'être interprété en ce sens que le conseil de sécurité serait autorisé à requérir également l'intervention d'Etats membres des Nations Unies qui sont restés étrangers au procès. Une telle interprétation extensive ne pourrait s'appuyer ni sur le droit international général, ni sur d'autres dispositions de la charte. Tout ce qu'on peut dire, c'est qu'elle ne serait pas, à première vue, incompatible avec les termes très vagues de l'article 94, alinéa 2.

Il serait naturellement agréable d'avoir une interprétation authentique, mais la charte n'autorise aucun organe des Nations Unies à en donner une, et selon toute probabilité ni l'assemblée générale, ni le conseil de sécurité ne consentiraient à entrer dans cette voie. Quant à la cour elle-même, elle ne pourrait se prononcer qu'à la suite d'une demande d'avis consultatif émanant de l'assemblée générale ou du conseil de sécurité (art. 96 de la charte). Une démarche de la Suisse tendant à obtenir une interprétation authentique de l'article 94, alinéa 2, n'aurait donc guère de chance d'aboutir et elle serait en outre particulièrement inopportune au point de vue politique.

A vrai dire, le besoin d'une telle interprétation ne se fait même pas sentir. Nous avons déjà relevé qu'une interprétation normale de l'article 94, alinéa 2, ne conduit pas à admettre l'obligation de participer aux mesures que le conseil de sécurité pourrait prendre en vue de faire exécuter un arrêt rendu entre Etats tiers. Mais même si par une interprétation extensive une telle obligation devait être à la charge de la Suisse, cela ne signifierait pas qu'en l'acceptant elle porterait atteinte à sa neutralité.

En effet, les seules mesures collectives de coercition qui puissent être incompatibles avec une politique de neutralité sont celles du chapitre VII de la charte: en premier lieu les actions militaires prévues à l'article 42, mais aussi, suivant les circonstances, la rupture des relations diplomatiques et l'interruption des relations économiques au sens de l'article 41. Une participation de la Suisse à des mesures militaires est exclue d'emblée, car elle supposerait la conclusion de l'accord spécial prévu à l'article 43. D'autre part, toutes les mesures collectives énumérées au chapitre VII ne peuvent être appliquées par le conseil de sécurité qu'en vue du maintien de la paix et nous avons vu qu'au sens de la charte la menace contre la paix et l'inexécution d'un arrêt de la cour sont des notions distinctes entre lesquelles aucun rapport n'a été établi.

Si donc en vertu d'une interprétation extensive de l'article 94, alinéa 2, le conseil de sécurité s'estimait autorisé à requérir l'intervention de la Suisse en vue de l'exécution d'un arrêt rendu entre Etats tiers, il ne pourrait pas lui demander de participer à des mesures du genre de celles qui sont prévues au chapitre VII et il devrait se limiter à des mesures moins graves, compatibles par conséquent avec une politique de neutralité.

Declarations Accepting Compulsory Jurisdiction

During the course of the year, some progress was made in the extension of the Court's compulsory jurisdiction, though it is by no means commensurate with the hopes which seemed to be justified when in 1945 the representatives of so many States urged the inclusion in the Statute of a provision for general compulsory jurisdiction. Declarations under Article 36, paragraph 2, were made during the year by Guatemala, France, Mexico, the Philippine Republic, Sweden and Turkey; and Brazil gave notice of an intention to make such a declaration.

On January 27, 1947, the following declaration was made on behalf of the Government of Guatemala (translation):^o

The Government of Guatemala declares that, in accordance with Article 36 (2) and (3) of the Statute of the International Court of Justice, it recognizes as compulsory, ipso facto and without special agreement, in relation to any other State accepting the same obligation, and for a period of five years, the jurisdiction of the Court in all legal disputes. This declaration does not cover the dispute between England and Guatemala concerning the restoration of the territory of Belize, which the Government of Guatemala would, as it has proposed, agree to submit to the judgment of the Court, if the case were decided "ex aequo et bono," in accordance with Article 38 (2) of the said Statute. Guatemala, 27 January 1947. [Signed] E. Silva Pena.

Guatemala's previous declaration of December 17, 1926, had not been ratified.

It is to be recalled that a special declaration had been made by the British Government on February 13, 1946, with reference to "all legal disputes concerning the interpretation, application or validity of any treaty relating to the boundaries of British Honduras." Following the deposit of the British declaration, on June 13, 1946, the Guatemalan Government informed the British Minister in Guatemala that "in this long and lamentable question of Belize there has never existed a dispute on boundaries," and that instead the dispute dealt "with an eminently territorial question"; it was therefore proposed by the Government of Guatemala that the dispute should be referred to the Court for a decision *ex aequo et bono*; the Guatemalan Government was of the view that "there

^o 1 United Nations *Treaty Series*, p. 49.

are some antecedents and circumstances which the Tribunal must value equitatively and take them fully into consideration to solve this question with a fair verdict."¹⁰

The British reply of October 10, 1946, insisted that the points on which the two Governments were not in agreement were "legal points," and that claims of Guatemala had been advanced "on a legal basis." It called attention to the fact that no dispute had ever been submitted to the Court at The Hague for a decision *ex aequo et bono* "though the possibility of so doing has existed ever since the Statute of the former Court came into force." The British Government therefore suggested that Guatemala "take advantage of the jurisdiction which His Majesty's Government's declaration confers on the Court to pronounce upon the dispute." The Guatemalan reply of October 15, 1946, reiterated the position of the Guatemalan Government.

On July 16, 1947, the Guatemalan Government addressed a protest to the United Kingdom against a reported intention to include the Guatemalan territory of Belize in a proposed federation of British colonies in the Caribbean, and reserved its rights with respect to the caducity of the Treaty of April 30, 1859. Again, on August 18, 1947, the Guatemalan Government protested to the United Kingdom against the reported colonization of the territory of Belize, which, in its view, was inconsistent with international practice in such a situation and contrary to the maintenance of good relations.

On February 18, 1947, the Government of the French Republic transmitted to the Secretariat an undated declaration in the following terms (translation):

On behalf of the Government of the French Republic, and subject to ratification, I declare that I recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with Article 36, paragraph 2, of the Statute of the said Court, for all disputes which may arise in respect of facts or situations subsequent to the ratification of the present declaration, with the exception of those with regard to which the parties may have agreed or may agree to have recourse to another method of peaceful settlement.

This declaration does not apply to differences relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic.

The present declaration has been made for five years from the date of the deposit of the instrument of ratification. It shall continue in force thereafter until notice to the contrary is given by the French Government. [*Signed*] Bidault.

¹⁰ Two interesting brochures on the dispute have been published by the Ministerio de Relaciones Exteriores of Guatemala.

Declarations made by France on September 19, 1929, and on April 7, 1936, had expired according to their terms. The new declaration had not been ratified at the close of the year.

On February 18, 1947, the Mexican Government informed the Secretary General of the United Nations of its decision to seek constitutional approval for a recognition by Mexico of the jurisdiction of the Court as from March 1, 1947. The proposal was approved by the Senate of the Republic, and on October 23, 1947, the declaration was communicated to the Secretary-General in the following terms:

In regard to any legal dispute that may in future arise between the United States of Mexico and any other State out of events subsequent to the date of this Declaration, the Mexican Government recognizes as compulsory *ipso facto*, and without any special agreement being required therefor, the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2 of the Statute of the said Court, in relation to any other State accepting the same obligation, that is, on condition of strict reciprocity. This Declaration, which does not apply to disputes arising from matters that, in the opinion of the Mexican Government, are within the domestic jurisdiction of the United States of Mexico, shall be binding for a period of five years as from 1 March 1947 and after that date shall continue in force until six months after the Mexican Government gives notice of denunciation. [Signed] Jaime Torres Bodet, Secretary for Foreign Affairs.

No previous declaration had been made by Mexico.

On May 22, 1947, the Turkish Minister for Foreign Affairs made the following declaration (translation from the French), which was later communicated to the Secretary-General of the United Nations:

In accordance with Article 36, paragraph 2, of the Statute of the International Court of Justice, and in conformity with Law No. 5047, promulgated by the Grand National Assembly on 12 May 1947, I declare, on behalf of the Government of the Republic of Turkey, that Turkey recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is to say, under conditions of reciprocity, the jurisdiction of the International Court of Justice for a period of five years from 22 May 1947, in all disputes which will arise in the future concerning:

- A/ the interpretation of a treaty;
- B/ any question of international law;
- C/ the existence of any fact which, if established, would constitute a breach of an international obligation;
- D/ the nature or extent of the reparation to be made for the breach of an international obligation;

Under the reservation however, that this declaration does not apply:

- a/ to situations previous to the present declaration and to disputes which arise therefrom;

- b/ to disputes for which it would be appropriate to apply, directly or indirectly, Agreements and Conventions concluded by Turkey providing for a different method of settling disputes. [Signed] Hasan Saka, Minister for Foreign Affairs.

The Turkish declaration of March 12, 1936, had expired according to its terms.

On July 12, 1947, the following declaration was made on behalf of the Republic of the Philippines:

I, MANUEL ROXAS, President of the Philippines, declare on behalf of the Republic of the Philippines, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with Resolution No. 33, dated May 22, 1947, of the Senate of the Republic of the Philippines, that the Republic of the Philippines recognizes as compulsory *ipso facto*, and without special agreement, in relation to any other state accepting the same obligation, and on condition of reciprocity, the jurisdiction of the International Court of Justice in all cases enumerated in paragraph two, Article thirty-six, of the Statute of the Court, for a period of ten years, from July fourth, nineteen hundred and forty-six, and thereafter to continue until notification of abrogation is made by the Philippine Government.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 12th day of July, in the year of our Lord, one thousand nine hundred and forty-seven, and of the Independence of the Philippines, the second. (Signed) MANUEL ROXAS.

No previous declaration had been made on behalf of the Republic of the Philippines.

On April 5, 1947, the Swedish Government made the following declaration, the original being in French:

On behalf of the Royal Swedish Government, I declare that it accepts as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice, in accordance with Article 36, paragraph 2, of the Statute of the Court, for a period of ten years, in all disputes which may arise with regard to situations or facts subsequent to the present declaration. (Signed) Herman Eriksson.

Previous declarations had been made by Sweden on August 16, 1921, March 18, 1926, and April 18, 1936.

At the close of 1947, the following twenty-seven States were bound *inter se* by declarations under Article 36 (2) recognizing the compulsory jurisdiction of the Court, the declarations varying in their terms and some of them having been made before the revision of the Statute in 1945:¹¹

¹¹ Based in part upon the list appearing in the Court's *Yearbook* for 1946-1947, pp. 110-112.

Australia	New Zealand
Canada	Nicaragua
China	Norway
Colombia	Panama
Denmark	Paraguay ¹²
Dominican Republic	Philippine Republic
El Salvador	Siam
Guatemala	Sweden
Haiti	Turkey
India	Union of South Africa
Iran	United Kingdom
Luxembourg	United States
Mexico	Uruguay
Netherlands	

In addition, as parties to the Geneva General Act of 1928, the following sixteen States have accepted the Court's compulsory jurisdiction *vis-à-vis* other States parties to the Act, and subject to its terms: ¹³

Australia	Luxembourg
Belgium	Netherlands
Canada	New Zealand
Denmark	Norway
Ethiopia	Peru
France	Sweden
Greece	Turkey
India	United Kingdom

It is to be regretted that two sessions of the General Assembly have been held with but little in the way of a concerted movement for encouraging further declarations recognizing the Court's compulsory jurisdiction. One reason for this may have been the failure of the Secretariat to give adequate publicity to the declarations actually made. On November 14, 1947, however, the General Assembly did adopt a resolution ¹⁴ in which it

draws the attention of the States which have not yet accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraphs 2 and 5 of the Statute, to the desirability of the greatest possible number of States accepting this jurisdiction with as few reservations as possible.

The declaration under Article 36 (2) which was deposited by the United States on August 26, 1946, contained two exclusions from the jurisdiction accepted which had not previously been made in any other State's declaration. The first exclusion was of

¹² Subject to the effect of the Paraguayan decree of April 26, 1938.

¹³ League of Nations *Official Journal*, Special Supplement, No. 193, p. 45.

¹⁴ Document A/459, 11 November 1947.

disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America.

The second exclusion was of

disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction.

Both of these exclusions are to be regretted. It would be lamentable, however, and it would greatly set back the progress toward universalizing the Court's jurisdiction, if they were permitted to become patterns for exclusions to be made in the declarations of other States. That this danger, to which the writer referred at the time,¹⁵ is very real, is shown by the French and Mexican declarations made in 1947, each of which embodies the substance of the first exclusion; yet it is a cause for rejoicing that the American formula as to domestic matters was not copied in the declarations made in 1947 by Guatemala, the Philippine Republic, Sweden, and Turkey.

Fortunately, so far the second American exclusion referred to above has not been imitated in other declarations. In an astonishing apologia for this exclusion,¹⁶ Mr. Quincy Wright has endeavored to cast and confine the effect of this exclusion as follows:

... the proviso was intended to assume that states with a legal interest which will be directly affected by a decision concerning a multilateral treaty become, in every sense, parties to the dispute before the Court. It was, therefore, intended to clarify Articles 62 and 63 of the Statute of the Court by requiring (1) that a request under Article 62 shall not be decided arbitrarily, but by a judicial determination of the claim presented by the requesting state that it has "an interest of a legal nature which may be affected by the decision in the case"; (2) that if such an interest is found or if a state intervenes under Article 63, the intervenor shall have the status of a party to the dispute under Article 59 and other articles of the Statute, and, if a member of the United Nations, under Article 94 of the Charter; (3) that a state which has a legal interest of such nature that it ought to be bound by the decision may be required to become a party; and (4) that if the Court does not apply these rules in a case brought against the United States by virtue of its declaration under the optional clause, the United States may deny the jurisdiction. With this construction the reservation would be clarified if it were expanded to read as follows:

This declaration shall not apply to ... (c) disputes arising under a multilateral treaty, unless (1) all parties to the treaty, (with an interest of a legal nature which will be) affected by the decision, are also (permitted, or in exceptional circumstances required by the Court to intervene and thereby to become) parties

¹⁵ In 32 *American Bar Association Journal* (1946), pp. 882-836, 895-897.

¹⁶ In this *JOURNAL*, Vol. 41 (1947), pp. 445-452.

to the case before the Court, or (2) the United States of America specially agrees to the jurisdiction.

To sustain this interpretation, Mr. Wright relies on (1) a grammatical construction—a point of only slight significance; (2) evidence of the “Senate’s intention” in formulating the exclusion—this evidence is chiefly a statement by an adviser to the Senate Committee, and as no allusion to the matter was made on the floor of the Senate it includes no declarations by members of the Senate; (3) the unreasonableness of a construction which would “nullify a considerable part of the jurisdiction conferred”—this would solve the problem by a mere assumption that the jurisdiction was conferred; (4) the power of the Court to assume that “a State which fails to intervene under Articles 62 or 63 has no legal interest which may be affected”—this is a wholly gratuitous suggestion; and (5) “the right of intervention under Article 63 should not be assumed to mean that all parties to a multilateral treaty have an interest of a legal nature in every case in which the construction of the treaty is involved”—this flies in the face of the actual text of Article 63, read with Article 62.

It seems most unlikely that the views of Mr. Wright will command any acceptance. He is on dangerous ground in suggesting that the Court might *require* intervention; and his suspicion that the Court might be “arbitrary” in dealing with a State’s request to be permitted to intervene is a slur on the Court which its history completely refutes. More serious, however, is his intimation that despite the clear provision in Article 36 (6) of the Statute—to the effect that any dispute as to the Court’s jurisdiction “shall be settled by the decision of the Court”—the United States might under some circumstances “exercise a veto” on the Court’s decision. This is indeed a turning back of the hands of the clock. It is a reversion to ideas which commentators generally have thought to have been scotched by the Statute. It indicates a failure to appreciate the great progress made in international adjudication over a period of a quarter of a century. Happily, no phrase in the official documentation appears to support such a view.

Jurisdiction Conferred by Treaties

Numerous treaties concluded in the course of the years since 1920 have conferred jurisdiction on the Court,¹⁷ and many of these treaties are still in force; under Article 37 of the Statute, such provisions for reference to the Permanent Court of International Justice may be applicable, as between the parties to the Statute, to the International Court of Justice.

It is difficult to survey the treaties concluded since 1945 which contain provisions for the Court’s jurisdiction. Such delay has been encountered

¹⁷ See *Publications* of the Permanent Court of International Justice, Series D, No. 6, and the supplements in Series E.

in the publication of the United Nations Treaty Series,¹⁸ that the texts are not readily available. Mention may be made, however, of the Treaty of Alliance entered into by the United Kingdom and Transjordan on March 22, 1946, which provides in Article 13:¹⁹

Should any difference arise relative to the application or the interpretation of the present Treaty, and should the High Contracting Parties fail to settle such difference by direct negotiation, the difference shall be referred to the International Court of Justice unless the parties agree to another mode of settlement.

The conciliation convention between the United States and the Philippine Republic, signed on November 16, 1946, but not yet brought into force, contains a broad provision for the possible submission of "any disputes . . . of whatever nature they may be" to a permanent International Commission of Conciliation for investigation and report, and adds

Should no definite settlement be reached, notwithstanding the report and recommendations of the International Commission on the matter in dispute, the High Contracting Parties agree to submit the dispute to the jurisdiction of the International Court of Justice conformably with Article 36 of its Statute, and further agree to be bound without need of special agreement by the decision of the Court.²⁰

This provision might confront the Court with a necessity of determining whether it could decide a dispute in which no legal question were involved.

On November 14, 1947, the General Assembly approved a resolution by which it

DRAWS THE ATTENTION of States Members to the advantage of inserting in conventions and treaties arbitration clauses providing, without prejudice to Article 95 of the Charter, for the submission of disputes which may arise from the interpretation or application of such conventions or treaties, preferably and as far as possible to the International Court of Justice.

On November 29, 1947, the General Assembly recommended to the United Kingdom and to all other Members of the United Nations the adoption and implementation, with regard to the future government of Palestine, of a "Plan of Partition with Economic Union." This Plan embodies the text of a Declaration to be made to the United Nations by each of the two proposed States to be created in Palestine, and the Declaration provides in Chapter 4 that

any dispute relating to the application or the interpretation of this Declaration shall be referred, at the request of either Party, to the International Court of Justice, unless the Parties agree to another mode of settlement.²¹

¹⁸ Volume 1 appeared in 1947.

¹⁹ *British Treaty Series* No. 82 (1946). *Cmd.* 6918.

²⁰ 80th Congress, 1st Session, Senate Executive C.

²¹ Document A/AC/14/34, 19 November 1947.

The substantive provisions of the proposed Declaration are in part reminiscent of the treaties for the protection of minorities which formed part of the settlements after the War of 1914.

Requests for Advisory Opinions

Article 96 of the Charter of the United Nations empowers both the General Assembly and the Security Council to request the Court to give advisory opinions, and adds that "other organs" of the United Nations and specialized agencies may be authorized by the General Assembly to make such requests. Other principal organs of the United Nations are the Economic and Social Council, the Trusteeship Council and the Secretariat (the Court itself is obviously to be excluded). On December 11, 1946, the General Assembly authorized the Economic and Social Council to make requests, and on November 14, 1947, similar authorization was given to the Trusteeship Council. No question seems to have arisen as to an authorization to the Secretariat to make requests.

The four specialized agencies which concluded agreements with the United Nations in 1946 were authorized to make requests for advisory opinions: the International Labor Organization, the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization of the United Nations, and the International Civil Aviation Organization. By agreements approved by the General Assembly in 1947, the International Bank for Reconstruction and Development, the International Monetary Fund, the International Telecommunications Union, and an International Health Organization were similarly authorized. The agreement with the Universal Postal Union is silent on the point.

The results of this extension are yet to be seen. It would be most unfortunate if the Court came to be looked upon as a general legal adviser to the various bodies which now have competence to request opinions, or if these bodies failed to take into account the judicial limitations which the Court should not relax in its advisory procedure.

The fact that the Court had no cases before it during a period of twelve months after its reorganization has led to a desire in some quarters to see action taken which would increase its use. In the long run, the activation of the Court must depend upon the need for its adjudication, and that need cannot be born of artificial stimulation. Danger lurks in any attempt to stir up litigation, for it is likely to obscure appreciation of the judicial limitations within which the Court must be scrupulously confined if it is to possess the authority needed for its judgments.

Dissatisfaction has been expressed because some of the disputes coming before the Security Council have been handled on a political rather than a legal basis. Yet it is to be borne in mind that in some disputes the legal relations of the parties are subordinate to the political considerations involved, that in some cases it may be a disservice to the Court to urge that

such disputes be handled by Judges on the bench. If the Court is to serve as "the chief judicial organ" of organized international society, if it is to maintain the prestige which is essential to its functioning as such, it must not be pressed to assume political functions, and it cannot be made a substitute for effective political agencies. Some of the current insistence on more frequent resort to the advisory function of the Court is dangerously near to ignoring this basic consideration.

Law proceeds on respect for acquired rights. Inevitably, it tends to bolster entrenched privilege. In the national sphere, elaborate controls can be established by highly developed legislative processes, and democratic influences can restrict the perpetuation of privilege; limits exist on the effectiveness of even national legislation, however, in such fields as industrial relations. In the international sphere legislative processes are less developed, and legal restraints are more difficult to achieve. Hence, wider range must be given to political adjustments in international affairs, and it is not strange that challenges to historical entrenchment do not always proceed on the basis of respect for law.

Various questions arose in the deliberations of the Security Council and the General Assembly during the year 1947, concerning which it was proposed that the Court be requested to give advisory opinions. Such proposals were made in the Security Council in connection with the Indonesian dispute and with the dispute between Egypt and the United Kingdom. In the General Assembly, various delegations proposed a request for an advisory opinion concerning the power of the General Assembly to pass its resolution of November 29, 1947, relating to the partition of Palestine.

Insofar as the requests proposed have related to the powers of organs of the United Nations, it would seem that a policy of caution was justified. No great international instrument is ever completely self-explanatory, and meaning needs to be given to its provisions, not so much by the rulings of Judges on the bench, as by the experience of those who have the responsibility of making the instrument work. In some instances, the chief organs of the United Nations would therefore do better to give their own interpretation of constitutional texts, to iron out uncertainties, to complete the sense, and even to fill in lacunae.²² Many people think, for example, that compared with the Covenant of the League of Nations, the Charter is already burdened with details, and it would be unfortunate if too many questions of construction were entrusted for solution to men necessarily removed from the constant vigil which is to be exercised in the accumulation of the precedents dictated by experience.

²² This procedure was followed in connection with the controversy concerning the application of Articles 11 and 12 of the Statute in the elections of Judges. The rule adopted by the General Assembly on November 19, 1946, was approved by the Security Council on June 4, 1947, thus obviating a previous proposal that an advisory opinion be requested.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

In practice and under Article 68 of the Statute, the Court's procedure in giving advisory opinions has been closely assimilated to its procedure in contentious cases, and in the exercise of its advisory function it observes the limits which are inherent in the nature of judicial procedure. Any departure from this course would be regrettable, and so long as it is followed the Court's competence should not be deemed to be incidental to that of any other organ or body.

Appointments by the President of the Court

Under provisions in international instruments²⁰ or otherwise, the President of the Court is frequently called upon to make appointments of persons to act in various capacities. On July 31, 1947, the President gave effect to a request of the French Government in naming three observers to attend the plebiscite to be held under the Peace Treaty with Italy in the districts of Tende and Brigue on the Franco-Italian frontier. He appointed J. A. van Hamel of the Netherlands, F. Perréard of Switzerland, and Eric Sjöberg of Sweden.

Budget of the Court

A draft of the Court's budget for 1948, drawn up by the Court itself, was approved by the General Assembly without any substantial modification. It provides for a possible total expenditure of \$690,011, as against a figure of \$638,412 for 1947. Both of these figures exceed the largest budget of the Court down to 1940, due chiefly to the higher salaries now being paid.

Publications of the Court

The publications of the reorganized Court have been projected along the lines previously followed. To date, only two serial publications have been issued; Series D, No. 1, containing the texts of the basic instruments relating to the Court appeared in 1946, a second expanded edition, with a useful index to the Statute and Rules, appearing in May, 1947. The first number of the Court's Yearbook covers the period from the beginning of 1946 to July 15, 1947; future issues of the Yearbook will be published in August of each year. The Registry's communications to the press are not printed.

²⁰ See the Court's *Yearbook*, 1946-1947, p. 232.

THE PEACE OF WESTPHALIA, 1648-1948

By LEO GROSS

The acceptance of the United Nations Charter by the overwhelming majority of the members of the family of nations brings to mind the first great European or world charter, the Peace of Westphalia. To it is traditionally attributed the importance and dignity of being the first of several attempts to establish something resembling world unity on the basis of states exercising untrammelled sovereignty over certain territories and subordinated to no earthly authority.

The next attempt, the settlement of Vienna of 1815 and the Congress of Aix-la-Chapelle of 1818, which in a sense completed the former, gave birth to that loose system of consultation between the Great Powers known as the Concert of Europe. Born of the cataclysm of the Napoleonic Wars and anchored in the Protocol of the Aix-la-Chapelle of November 15, 1818, the Concert provided some sort of a self-appointed directing body for the maintenance and manipulation of that balance of power on which the European peace precariously reposed for about a hundred years. Uncertain in its foundations, devoid of much organization or continuity, it was characterized as much by the devotion of the Great Powers which composed it to the policy of a free hand as it was, in consequence, by the absence of definite commitments. Consultation and conference on problems of mutual interest was a frequent practice but no obligation of the Great Powers. It was precisely this flexibility, frequently regarded and praised as the chief virtue of the concert system, which ultimately brought about its ruin at a moment when it was most desperately needed. The policy of free hands reaped a large harvest in World War I.

Faced with the devastating results of World War I and the bankruptcy of the Concert, the Paris Settlement of 1919, without essentially departing from the Peace of Westphalia, attempted a novel solution, drawing for its inspiration on the Concert, the Hague Peace Conferences, the experience of the nineteenth and twentieth centuries in non-political international collaboration, and the wartime collaboration between the Allied and Associated Powers. It produced the League of Nations, in which the member states assumed certain commitments to coöperate in various fields and, above all, without abolishing the right of war, *jus ad bellum*, to establish "the undertakings of international law as the actual rule of conduct among governments." It is a moot question whether the failure of the League should be attributed to a defective legal technique in organizing international security or to a kind of fatal and gradual relapse of the Great Powers into the traditional methods of consultation untrammelled by and frequently in open disregard of their obligations under the Covenant.

The climax in this process of degeneration was reached in 1939 when alliances were hurriedly tossed around and when Poland, though attacked by Germany on September 1, 1939, found it convenient to manifest its contempt of the League of Nations by not even appealing to it under Article 10 of the Covenant, and when Great Britain and France went to the assistance of Poland not because they were legally bound to do so by the Covenant but because they felt in honor bound to fulfill their obligations as allies in Poland. Thus World War II started in the customary way, even as if the League were non-existent; as a consequence the League was doomed.

Critics of the United Nations Charter point out that it includes some of the elements of the League organization and that it relies even more heavily than did the League on the notion of consultation, on limited obligations in the political, and the method of voluntary coöperation in the non-political, field. The Charter proclaims that the organization is based on the sovereign equality of all the members only in order the firmer to establish the hegemony of a group of Great Powers. On the other hand, in Articles 24 and 25, the principal framers of the Charter almost obtained what the Concert never succeeded in obtaining, namely, the recognition by the lesser nations of the preëminent position of the Great Powers as the guardians of international peace and security. In spite of this and other important indications of a new approach to the problem of international security and relations, the Charter at first glance would seem to have left essentially unchanged the framework of the state system and of international law resulting from the Peace of Westphalia.

Thus the Peace of Westphalia may be said to continue its sway over political man's mind as the *ratio scripta* that it was held to be of yore. What is the explanation of this curious phenomenon? In view of this continued influence of the Peace of Westphalia, it may not be amiss to discuss briefly its character, background and implications.

It should be clear from the outset that the actual provisions of the Treaties of Osnabrück between the Empire and Sweden, and of Münster between the Empire and France and their respective confederates and allies, have undergone more than one substantial change in the course of time. The political map of Europe as outlined in these Treaties is no longer. It should be noted, however, that the chief political idea underlying the Franco-German settlement of 1648 has undergone relatively little change. Then the axiom of French politics was, as it appears to be today, that the best guarantee of French security lies in a divided and impotent Germany, and that this division and impotence must be secured by appropriate provisions such as those which gave France a right to intervene when necessary in order to vindicate the principle of the sanctity of treaties.

The Thirty Years' War had its origin, at any rate partially, in a religious conflict or, as one might say, in religious intolerance. The Peace

of Westphalia consecrated the principle of toleration by establishing the equality between Protestant and Catholic states and by providing some safeguards for religious minorities. To be sure, the principle of liberty of conscience was applied only incompletely and without reciprocity.¹ The religious Peace of Augsburg of 1555 and the rule *cujus regio ejus religio* were confirmed. With a view to alleviating the lot of religious minorities, however, the Treaty of Osnabrück provided that²

subjects who in 1627 had been debarred from the free exercise of their religion, other than that of their ruler, were by the Peace granted the right of conducting private worship, and of educating their children, at home or abroad, in conformity with their own faith; they were not to suffer in any civil capacity nor to be denied religious burial, but were to be at liberty to emigrate, selling their estates or leaving them to be managed by others.

Moreover, in an effort to assure equality between Catholic and Protestant members of the German Diet, the Treaty of Osnabrück laid down the important rule that in matters pertaining to religion³

a majority of votes should no longer be held decisive at the Diet; but that such questions should be settled by an amicable 'composition' between its two parts or *corpora*. . . . In the same spirit of parity it was agreed that when possible there should be equality of consulting and voting power between the two religions on all commissions of the Diet, including those *Deputationstage* which had come to exercise an authority nearly equalling that of the Diets themselves.

The principle of religious equality was placed as part of the peace under an international guarantee.⁴ The Peace of Westphalia thereby established a precedent of far-reaching importance. One or two illustrations may be in order. The Constitution of the Germanic Confederation of June 8, 1815, which forms part of the Final Act of the Congress of Vienna of June 9, 1815, stipulates in Article XVI that the difference between the Christian religions should cause no difference in the enjoyment by their adherents of civil and political rights, and, furthermore, that the German Diet should consider the grant of civil rights to Jews on condition that

¹ Sir A. W. Ward, *The Peace of Westphalia*, The Cambridge Modern History, Vol. IV, 1934, p. 416: "... the provision made for individual freedom in the exercise of any of the recognized religions was insufficient; and from the dominions of the House of Austria as a whole, Protestant worship was deliberately excluded." But see Yves de la Brière, *La Société des Nations*, 1918, p. 57.

² Ward, work cited, p. 412. See also Andrea Rapisardi Mirabelli, "Le Congrès de Westphalie," 8 *Bibliotheca Visseriana* (1929), p. 75.

³ Ward, work cited, p. 414; Mirabelli, work cited, pp. 13, 76.

⁴ Mirabelli, work cited, p. 13: *Mais une circonstance ultérieure—importante au point de vue international—c'était que le principe de l'égalité des confessions (basé jusqu'alors sur la tolérance des Princes, ou sur des lois révocables) prenait alors la forme d'engagement international, fixé conventionnellement par les traités et pour cela assuré par leur force et leur durée.*

they assume all civic duties incumbent on other citizens.⁵ By the time the Congress of Berlin convened the principle of religious tolerance had become so firmly established that the delegate of France, M. Waddington, could make the following statement:⁶

Mr. Waddington believes that it is important to take advantage of this solemn opportunity to cause the principles of religious liberty to be affirmed by the representatives of Europe. His Excellency adds that Serbia, who claims to enter the European family on the same basis as other states, must previously recognize the principles which are the basis of social organization in all states of Europe and accept them as a necessary condition of the favor which she asks for.

The representatives of Great Britain, Germany, Italy, Austria-Hungary, and of the Ottoman Empire concurred in the view propounded by M. Waddington and the Congress acted accordingly in the case of Serbia, Montenegro, and Rumania.

This precedent was relied upon by the Principal Allied and Associated Powers in submitting to Poland the Treaty of June 28, 1919, concerning the protection of minorities. In his covering letter to M. Paderewski, the President of the Paris Peace Conference stated that "This treaty does not constitute any fresh departure," and continued as follows:⁷

It has for long been the established procedure of the public law of Europe that when a state is created, or even when large accessions of territory are made to an established state, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should, in the form of a binding international convention, undertake to comply with certain principles of government.

The latest step in this long line of evolution is represented by the United Nations Charter, the Preamble of which declares that the peoples of the United Nations are determined "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations, large and small," and, "to practice

⁵ 2 *British and Foreign State Papers*, 1814-1815, p. 132. The Final Act of Vienna and its Annexes include several interesting provisions designed to ensure freedom of religion. A particularly illuminating example is to be found in Article II of the Annex to the Treaty between the King of the Netherlands and Austria of May 31, 1815, which reads: *Il ne sera rien innové aux Articles de cette Constitution qui assurent à tous les Cultes une protection et une faveur égales, et garantissent l'admission de tous les Citoyens, quelle que soit leur croyance religieuse, aux emplois et offices publics.* Work cited, p. 141.

⁶ Protocol of June 28, 1878. 69 *British and Foreign State Papers*, 1877-1878, p. 960; English translation from the "Letter addressed to M. Paderewski by the President of the Conference (M. Clemenceau) transmitting to him the Treaty to be signed by Poland under Article 93 of the Treaty of Peace with Germany" of June 24, 1919. 112 *British and Foreign State Papers*, 1919, p. 226. See also George A. Finch, "The International Rights of Man," in this JOURNAL, Vol. 35 (1941), p. 662.

⁷ See letter quoted in the preceding note.

tolerance and live together in peace with one another as good neighbors." It is one of the basic purposes of the United Nations to achieve international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." If the efforts of the United Nations are crowned with success by the adoption of an international bill of the fundamental rights of man, they will have accomplished the task which originated in the religious schism of Europe and which had found its first, albeit an inadequate, solution on an international basis in the Peace of Westphalia.

Another aspect of the Peace of Westphalia which exercised considerable influence on future developments relates to the guarantee of the peace itself. Both treaties declare that the peace concluded shall remain in force and that all parties to it "shall be obliged to defend and protect all and every article of this peace against anyone, without distinction of religion."⁸ This was by no means a new departure. As Van Vollenhoven pointed out, the promise of guarantee in the treaties of 1648 merely followed earlier precedents.⁹ Nevertheless this guarantee of the observance and the execution of an agreed international transaction, including as it did clauses of a constitutional character, as far as the Empire was concerned, came to assume in the following decades an overriding significance. It was pointed out that "no guarantee was more important or has been more often referred to than that included in the treaties of Westphalia."¹⁰

These treaties contain clauses by which Sweden and France not only make peace with the Emperor on certain terms, but pledge themselves to their allies, the subordinate German Princes, that they will ensure that the privileges and immunities conferred on the Princes and free cities of Germany in the treaty shall be upheld and maintained. This is constantly referred to in later treaties as the guarantee for the execution of the terms of the treaty and, as Sir Ernest Satow has pointed out, it continued to be regarded as valid almost down to the outbreak of the French Revolution. Here, again, the fact of the guarantee was of the highest importance in ensuring that the treaties should be observed and that they should continue to hold their place as part of the general European System.

For the first time Europe thus received "what may fairly be described as an international constitution, which gave to all its adherents the right of intervention to enforce its engagements."¹¹ That this attempt to guarantee effectively a peace so laboriously achieved was not wholly successful needs hardly to be emphasized.¹² In this respect the Settlement of Westphalia is in good company with many other international instruments of historical importance.

⁸ Text from Article CXXIII of the Treaty of Münster, in *A General Collection of Treatys*, Vol. I, 1710, p. 36.

⁹ See C. Van Vollenhoven, *The Law of Peace*, 1936, p. 85.

¹⁰ Sir James Headlam-Moreley, *Studies in Diplomatic History*, 1930, p. 108. The statement quoted in the text continues, as follows:

¹¹ David Jayne Hill, *A History of Diplomacy in the International Development of Europe*, Vol. II, 1925, p. 602; but see La Brière, work cited, p. 67.

¹² Christian L. Lange, *Histoire de l'Internationalisme*, Vol. 1, 1919, p. 498.

In addition to the guarantee, the Settlement of Westphalia formulated (3) certain extremely interesting rules for the peaceful settlement of disputes and collective sanctions against aggressors. Thus the Treaty of Münster, in Articles CXIII and CXXIV stipulates that ¹³

if it happens that any point should be violated, the Offended shall before all things exhort the Offender not to come to any Hostility, submitting the Cause to a friendly Composition, or the ordinary Proceedings of Justice. Nevertheless, if for the space of three years the Difference cannot be terminated, by any of those means, all and every one of those concern'd in this Transaction shall be oblig'd to join the injur'd Party, and assist him with Counsel and Force to repel the Injury, being first advertis'd by the Injur'd that gentle Means and Justice prevail'd nothing; but without prejudice, nevertheless, to every one's Jurisdiction, and the Administration of Justice conformable to the Laws of each Prince and State; and it shall not be permitted to any State of the Empire to pursue his Right by Force and Arms; but if any difference has happen'd or happens for the future (between the states of the Empire), every one shall try the means of ordinary Justice, and the Contravener shall be regarded as an Infringer of the Peace. That which has been determin'd (between the States of the Empire) by Sentence of the Judge, shall be put in execution, without distinction of Condition, as the Laws of the Empire enjoin touching the Execution of arrests and Sentences.

This was a "novel feature" ¹⁴ in international treaty and peacemaking. The provisions for a moratorium of war, the settlement of disputes by peaceful means, and for individual and collective sanctions against the aggressor, after a delay of three years, although proclaimed primarily for the Empire, the members of which had been given their sovereign rights to conclude treaties of alliance, have nevertheless served as a model for numerous subsequent treaties. ¹⁵ They constitute, in a sense, an early precedent for Articles 10, 12, and 16, of the Covenant of the League of Nations. Writers on the subject, of course, have not failed to point out the shortcomings of the above-quoted provisions which admittedly were serious. ¹⁶

The grave dislocations in the social and economic life of Europe caused by the long war prompted the delegates to the Congress of Westphalia to discuss means designed to facilitate reconstruction. For this purpose two (4) clauses were inserted in the Treaties of Münster and Osnabrück. One aimed at restoring freedom of commerce by abolishing barriers to trade which had developed in the course of the war, and the other intended to

¹³ From Articles CXXIII and CXXIV of the Treaty of Münster, in work cited. C. Van Vollenhoven, "Grotius and Geneva," 6 *Bibliotheca Visseriana*, p. 72.

¹⁴ Van Vollenhoven, *The Law of Peace*, p. 86; see also p. 88.

¹⁵ Van Vollenhoven, *The Law of Peace*, p. 86.

¹⁶ Lange, work cited, p. 498. More definite provisions for arbitration were included in the Treaty between Spain and the United Provinces signed at Münster on January 30, 1648. See Van Vollenhoven, work cited, p. 88.

provide a measure of free navigation on the Rhine.¹⁷ In this respect, as in many others, there is apparent the particular character of the Westphalian peace which distinguishes it sharply from routine peace treaties and which points out its kinship with the great peace settlements of 1815 and 1919.

As the above rapid survey of some of the salient features of the Peace Settlement of 1648 discloses, the actual terms of the settlement, interesting and novel as they may be, would hardly suffice to account for the outstanding place attributed to it in the evolution of international relations. In order to find a more adequate explanation it would seem appropriate to search not so much in the text of the treaties themselves as in their implications, in the broad conceptions on which they rest and the developments to which they provided impetus.

In this order of ideas it has been affirmed that the Peace of Westphalia was the starting point for the development of modern international law.¹⁸ It has also been contended that it constituted "the first faint beginning of an international constitutional law" and the first instance "of deliberate enactment of common regulations by concerted action."¹⁹ In this connection the special merits of the work of Grotius have been stressed. On the one hand it has been argued that "Grotius adapted the (old) Law of Nature to fill the vacuum created by the extinction of the supreme authority of Emperor and Pope."²⁰ On the other hand it has been affirmed that Grotius developed a system of international law which would equally appeal to, and be approved by, the believers and the atheists, and which would apply to all states irrespective of the character and dignity of their rulers.²¹ It can hardly be denied that the Peace of Westphalia marked an epoch in the evolution of international law. It undoubtedly promoted the laicization of international law by divorcing it from any particular religious background, and the extension of its scope so as to include, on a footing of equality, republican and monarchical states. Indeed these two by-products of the Peace of 1648 would seem significant enough for students of international law and relations to regard it as an event of outstanding

¹⁷ Mirabelli, work cited, p. 84.

¹⁸ Paul Fauchille, *Traité de Droit International Public*, Vol. I, Pt. I, p. 75; see also P. H. Winfield, *The Foundations and the Future of International Law*, 1941, p. 18.

¹⁹ F. S. Dunn, "International Legislation," 42 *Political Science Quarterly* (1927), p. 577.

²⁰ Winfield, work cited, p. 20.

²¹ W. Van der Vlugt, "L'Oeuvre de Grotius et son Influence sur le Développement du Droit International," 7 *Recueil des Cours* (1925), p. 448; Mirabelli, work cited, pp. 54, 92. But see John N. Figgis, *From Gerson Grotius, 1414-1625*, 1916, p. 284, n. 13. This merit is now claimed for Gentili: A. P. Sereni, *The Italian Conception of International Law*, 1943, p. 114, "His first merit lies in having cleared the field of international law from the dogmas of a particular religion and of having distinguished the juridical from the ethical and political aspects of the problems debated."

and lasting value. It would seem hazardous, however, to regard the Settlement of Westphalia and the work of Grotius as more than stages in the gradual, though by no means uniform, process which antedates and continues beyond the year 1648.²² As to the contention that Grotius filled the vacuum created by the deposition of Pope and Emperor, more will be said about this in a different context.

Closely related with the stimulus to international law is the impetus said to have been given by the Peace of Westphalia to the theory and practice of the balance of power. Indeed, the existence of a political equilibrium has frequently been regarded as a necessary condition for the existence of the Law of Nations.²³ It has also become virtually axiomatic that the maintenance of the state system depends upon the preservation of a balance of power between its component and independent parts.²⁴ There is substantial evidence for the fact that while the principle of the balance of power had been evolved prior to 1648,²⁵ the Peace of Westphalia first illustrates its application on a grand scale. The operation of the maxim *partager pour équilibrer*²⁶ can be traced in the territorial clauses of the Treaties of Münster and Osnabrück. This is notably the case in those referring to the aggrandizement of France and Sweden, to the independence of the United Provinces, of the Swiss Confederation, and to the consolidation of about nine hundred units of the Empire into about three hundred. Henceforth, in the organization of Europe resulting from the Peace, *tout repose sur la convenance de balancer les forces et de garantir les situations acquises par l'établissement de contrepoids*.²⁷ It is interesting to note that the advocacy of a political equilibrium in the literature of the Renaissance has been interpreted as having the character of a protest against the rival principle of a universal monarchy.²⁸ It was argued, in effect, that the freedom of all states would be brought about as a result of the establishment of a political equilibrium.²⁹ In this sense the balance of power doctrine forms an important part of that

²² Van Vollenhoven, *The Law of Peace*, p. 1; Mirabelli, work cited, p. 7; Sereni, work cited, p. 124.

²³ Oppenheim, *International Law*, 4th ed., edited by Arnold McNair, Vol. I, 1928, p. 99; but see La Brière, work cited, pp. 62, 68.

²⁴ Van Vollenhoven, work cited, p. 91.

²⁵ Mirabelli, work cited, p. 10. See E. Kaeber, *Die Idee des europäischen Gleichgewichts in der publizistischen Literatur vom 16. bis zur Mitte des 18. Jahrhunderts*, 1907, pp. 8, 20.

²⁶ Charles Dupuis, *Le Principe d'Equilibre et le Concert Européen*, 1909, p. 23.

²⁷ Dupuis, p. 22; see also pp. 12, 20, and 21; La Brière, work cited, p. 60, 62.

²⁸ Lange, work cited, p. 133: *Au fond le principe d'équilibre implique une protestation contre le principe de l'Empire universel*. A publication in the year 1632 espoused the notion of the *système des contrepoids* and argued that the King of France *tiendra la balance du monde en ses mains, qu'il a apporté du Ciel*. Kaeber, work cited, p. 82.

²⁹ Kaeber, work cited, p. 41; G. L. Comte de Garden, *Histoire Générale des Traités de Paix*, Vol. I, 1848, pp. 246, 250.

body of political thought which came to fruition in the Peace of Westphalia. It assumed, thereby, increased significance and prestige.

Of even greater importance than any of these particular aspects of developments of the Treaties of Osnabrück and Münster were the general political ideas, the triumph of which they apparently consecrated in the mind of man. The Peace of Westphalia, for better or worse, marks the end of an epoch and the opening of another. It represents the majestic portal which leads from the old into the new world.⁸⁰ The old world, we are told, lived in the idea of a Christian commonwealth, of a world harmoniously ordered and governed in the spiritual and temporal realms by the Pope and Emperor.⁸¹ This medieval world was characterized by a hierarchical conception of the relationship between the existing political entities on the one hand, and the Emperor on the other.⁸² For a long time preceding the Peace of 1648, however, powerful intellectual, political, and social forces were at work which opposed and, by opposing them, undermined, both the aspirations and the remaining realities of the unified control of Pope and Emperor. In particular the Reformation and the Renaissance, and, expressive of the rising urge of individualism in politics, nationalism, each in its own field, attacked the supreme authority claimed by the Pope and the Emperor. The combined impact of these centrifugal forces could not, in the long run, be resisted solely by the writings of the defenders of their authority. To maintain the claims it would have been necessary to display a real overpowering authority. Neither the Pope nor the Emperor, however, was at that time in the position to restrain effectively the centrifugal tendencies. The latter was ultimately forced to abandon all pretenses on the field of battle and the former's protest against the Peace of Westphalia, the Bull *Zel Domus* of November 26, 1648,⁸³ failed to restrain the course of history. In the spiritual field the Treaty of Westphalia was said to be "a public act of disregard of the international authority of the Papacy."⁸⁴ In the political field it marked man's abandonment of the idea of a hierarchical structure of society and his option for a new system characterized by the coexistence of a multi-

⁸⁰ Robert Redslob, *Histoire des Grands Principes du Droit des Gens*, 1923, p. 223.

⁸¹ Dupuis, work cited, p. 9: *Le moyen âge avait revê d'organiser l'Europe sur la double base de l'unité de la chrétienté et de la hiérarchie des pouvoirs. Le pape et l'empereur, placés au sommet de la société internationale devaient, en théorie, maintenir l'unité, en se partageant la domination dans l'ordre spirituel et dans l'ordre temporel; ils devaient, en même temps, sauvegarder les droits de tous, en offrant un recours suprême contre les abus auxquels se pouvaient livrer les mille détenteurs de la souveraineté morcelée par régime féodal.* See also Julius Goebel, *The Equality of States*, 1923, p. 22.

⁸² Van der Vlugt, work cited, p. 448.

⁸³ J. Du Mont, *Corps Universel Diplomatique du Droit des Gens*, Vol. VI, Part I, 1708, p. 463.

⁸⁴ John Eppstein, *The Catholic Tradition of the Law of Nations*, 1935, p. 192; see also p. 325.

plicity of states, each sovereign within its territory, equal to one another, and free from any external earthly authority.³⁵ The idea of an authority or organization above the sovereign states is no longer. What takes its place is the notion that all states form a world-wide political system or that, at any rate, the states of Western Europe form a single political system.³⁶ This new system rests on international law and the balance of power, a law operating between rather than above states and a power operating between rather than above states.

It is true that the powers assembled at the Congress of Westphalia paid homage to the old conception of world unity by proclaiming in the preamble of the Treaty of Münster that it was made *ad Christianae Reipublicae salutem* and in that of the Treaty of Osnabrück *au salut de la République Chrestienne*.³⁷ Nevertheless, there is a notable lack of consensus in the appreciation of the major implications of the Peace of Westphalia. According to one view the old system was simply superseded by a modern, the present political, state system, a world-wide system.³⁸ On the other hand the view is also held that the Peace of Westphalia marks a decisive date in the history of the disorganization of the public law of Europe.³⁹ In this order of ideas it was argued that the system inaugurated by the Peace, while it may be new, was "as utterly remote as possible from a juridical order founded on a common respect for law";⁴⁰ and that in spite

³⁵ Sir Paul Vinogradoff, "Historical Types of International Law," 1 *Bibliotheca Visseriana* (1923), p. 45.

³⁶ Van Vollenhoven, *The Law of Peace*, p. 81.

³⁷ Du Mont, work cited, p. 450, 469.

³⁸ Van Vollenhoven, work cited, p. 81; G. F. de Martens, *Traité de Droit International*, Vol. I, 1883, p. 117; similarly Paul Fauchille, work cited, p. 75. Fauchille underscores *la reconnaissance par les Etats européens de la solidarité de leurs intérêts politiques, . . . dans l'application de l'idée qu'un certain équilibre politique était l'un des facteurs de la paix*; Oppenheim, work cited, p. 69; H. Treitschke, *Politics* (English translation), Vol. II, 1916, p. 569; Montagu Bernard, *Four Lectures on Subjects Connected with Diplomacy*, 1868, p. 6; T. J. Lawrence, "The Work of Grotius as a Reformer of International Law," *Essays on Some Disputed Questions of International Law*, 1885, p. 189; Edwin L. Borchard, "International Law," 8 *Encyclopaedia of the Social Sciences*, 1935, p. 169; James Bryce, *The Holy Roman Empire*, 1866 (revised edition), p. 372; see also Mirabelli, work cited, p. 8; Jacob ter Meulen, *Der Gedanke der Internationalen Organisation in seiner Entwicklung, 1300-1800*, 1917, p. 24; Hill, work cited, Vol. III, p. vii; same, Vol. II, 1906, p. 599, 604; Wolfgang Windelband, *Die auswärtige Politik der Grossmächte in der Neuzeit. Von 1494 bis zur Gegenwart*, 4th ed. (1936), p. 126 f.; see also Singer, "Völkerrechtsgeschichte," *Wörterbuch des Völkerrechts*, edited by Strupp, Vol. III, 1929, p. 193; Dupuis, work cited, pp. 18, 21; T. A. Walker, *A History of the Law of Nations*, 1899, Vol. I, pp. 147 and ff.; The Collected Papers of John Westlake on Public International Law, ed., by L. Oppenheim, 1914, pp. 55 ff.; E. H. Carr, *Nationalism and After*, 1945, p. 1.

³⁹ de la Brière, work cited, p. 58.

⁴⁰ Same, p. 53. The passage quoted with approval in Van Vollenhoven, at p. 83, appeared in the following context: *Dans leur modèlées politiques et diplomatiques, en effet, les tractations de Westphalie portent le caractère d'un empirisme tellement*

of all the appearances of the birth of a new international society of nations "even the germ of such a society was likely to be absent under a system in direct opposition to any impingement upon the sovereign independence of each individual state."⁴¹ Which of these conflicting views is accurate? The answer is difficult in the extreme for the materials regarding the basic problems of the origin of our state system lack coördination and clarity⁴² and all the necessary sources are not readily available. For these reasons the following remarks are necessarily tentative and intended to indicate rather than to solve the problems connected with the rise of the modern state system and the particular role of the Peace of Westphalia in this vital process.

The imperial authority, the gradual weakening of which is sometimes said to have set in as early as the Treaty of Verdun of 843, probably received a serious blow in the course and as a result of the Great Interregnum (1254-73) on the one hand, and the rise of independent or quasi-independent communities in Italy and of national states in England,⁴³ Spain, and France, on the other. The discovery of the New World and the extension of intercourse between the Western Christian and Eastern non-Christian world provided those opposing the claim of the Emperor to universal dominion with arguments of considerable persuasiveness. The Great Schism in the Church (1378-1417) and the rise of sects and eventually of the Reformation weakened correspondingly the authority of the Pope. These developments in the secular and spiritual fields which finally culminated in the Thirty Years' War and the Peace of Westphalia, were reflected in and stimulated by contemporaneous political thought.

One of the early opponents of the Emperor was Bartolus of Sassoferrato, who drew a fine distinction between the *de jure* overlordship of the Emperor and the *de facto* existence of *civitates superiorem non recognoscentes*.⁴⁴ The formula, said to be of French origin, was later cast by Baldus in a

brutal, tellement immoral, tellement incohérent, qu'on est en droit de les proposer aux négociateurs futurs de la paix du XXe siècle comme un parfait exemple des erreurs et des fautes dont il faudra désormais nous préserver à tout prix. Bien plus, dans son principe même (et c'est là surtout que nous voulons en venir), le règlement européen adopté à Münster et à Osnabrück constituera la première application général et solennelle de la politique d'équilibre, système diplomatique aussi radicalement éloigné que possible de l'ordre juridique, fondé sur le respect du droit des tous, qui est aujourd'hui le très noble objectif des promoteurs de la 'Société des Nations.'

⁴¹ Van Vollenhoven, *The Law of Peace*, p. 93.

⁴² Professor Sereni's book referred to above constitutes a recent and useful contribution.

⁴³ Sir Henry Maine, *Ancient Law*, 1930, p. 129, Pollock's Notes, to the effect that the Kings of England never owed or rendered any temporal allegiance to the Empire. Figgis, work cited, p. 213 suggests that "the dream of a universal state had disappeared with the failure of Charles V to secure the Empire for his son."

⁴⁴ Sereni, work cited, p. 59.

A lack of understanding of these considerations was strikingly illustrated when the Australian Delegation proposed that the General Assembly recommend ²³

that each organ of the United Nations and each Specialized Agency should regularly review the difficult and important questions of law within the competence of the International Court of Justice which have arisen and are likely from time to time to arise in the course of its activities, particularly questions of law relating to the interpretation of the Charter of the United Nations or the Constitution of the Specialized Agency, as the case may be, and should refer to the International Court of Justice for advisory opinion questions selected as a result of such review.

This seemed to some people to have envisaged an emptying of the wastebaskets at Lake Success into the lap of the Court at The Hague. Yet the form of the resolution adopted by the General Assembly on November 14, 1947, varies but slightly from the original proposal; it

RECOMMENDS that organs of the United Nations and the specialized agencies should, from time to time, review the difficult and important points of law within the jurisdiction of the International Court of Justice which have arisen in the course of their activities and involve questions of principle which it is desirable to have settled, including points of law relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies, and, if duly authorized according to Article 96, paragraph 2, of the Charter, should refer them to the International Court of Justice for an advisory opinion.²⁴

The phrase "within the jurisdiction of the International Court of Justice" has an illusory ring of certainty.

Section 21 of the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations, signed on June 26, 1947, and brought into force after approval by the General Assembly by an exchange of notes between the Secretary-General and a representative of the United States on November 21, 1947, contains an interesting provision on advisory opinions: ²⁵

(a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

²³ Document A/C.6/165, 8 October 1947.

²⁴ Doc. A/459, 11 November 1947.

²⁵ Document A/427, 27 October 1947.

(b) The Secretary-General of the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

Once rendered, an advisory opinion is what it purports to be. It is *advisory* merely. It lacks the binding force of a judgment as provided in Article 60 of the Statute which is now re-enforced by the provision in Article 94 (1) of the Charter. Yet there is no reason why the parties interested in a dispute to which the opinion relates may not agree in advance to be bound to carry out the conclusions which may be reached by the Court. Such an agreement results from the provision in Section 30 of the Convention on the Privileges and Immunities of the United Nations, of February 13, 1946, which reads as follows:²⁶

All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

A similar provision is embodied in Section 32 of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on November 21, 1947.²⁷

An impression seems to prevail in some quarters that the Court's advisory jurisdiction (competence) is in some way incidental to that of other organs of the United Nations, particularly to that of the Security Council.²⁸ It ought to be clear, however, that the Court has no competence to give an advisory opinion, except as provided for in Article 65 of its Statute. That Article provides:

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

²⁶ 1 United Nations *Treaty Series*, p. 30.

²⁷ Document A/503, 20 November 1947.

²⁸ "In the British-Albanian case, Albania has appeared and pleaded its cause before the Security Council. The International Court of Justice might therefore properly rule that it has jurisdiction to render an advisory opinion since this procedure is incidental to the jurisdiction of the Security Council." Philip C. Jessup, in 42 *Illinois Law Review* (1947), p. 285.

according to abstract principles of justice."⁶² But what, precisely, we may ask, was the nature of that autonomy? An indication of its meaning may perhaps be gleaned from Gentili's doctrine of the just war. One of the essential conditions of a just war is that it must be waged for a just cause. Gentili affirms that war may be waged with justice on both sides.⁶³ He is said to come close to Machiavelli's opinion that all necessary wars are justified.⁶⁴ But who decides whether there is a just cause, whether the necessity is of such a nature as to justify war? The answer to this question must obviously be of decisive importance for the understanding not only of Gentili's doctrine of just war but equally for his conception of international law. Now it is extremely interesting to note that the decision "concerning the lawfulness of war is on the whole left to each belligerent."⁶⁴ If this is an accurate interpretation of Gentili's doctrine, then the autonomy of international law would seem to assume a deeper meaning. It would indicate not merely the independence of international law from the precepts of civil law, religion, and ethics. It would also seem to indicate that the contents of international law as well as the existence or non-existence of international law depends upon the insight of the states concerned, or, to use a modern phrase, upon the will of the states.⁶⁵

Grotius and several subsequent writers still maintain natural or divine law alongside of customary law as a source of international law. It would seem, however, that with Grotius the accent begins to be transferred from the Law of Nature or divine law to that branch of human law which "has received its obligatory force from the will of nations, or of many nations."⁶⁶ Zouche, the "second founder of the Law of Nations," rather than Grotius,

⁶² Sereni, p. 107.

⁶³ Gentili, Book I, Ch. VI, p. 31.

⁶⁴ Sereni, p. 109.

⁶⁵ Gentili, while affirming that "some law of nature exists," stressed the difficulty involved in discovering "what that law is and how we shall prove that it is this or that": Book I, Ch. I, p. 5. His reasoning on this subject, particularly at p. 7, is illustrative of the difficulty inherent in any law of nature doctrine. Gentili seems to accept the agreement of states, not necessarily of all states, and usage, as a test of the existence of rules of international law: p. 8. See Phillipson's *Introduction*, p. 22a. It is also interesting to note that in discussing arbitration of dispute between sovereigns Gentili starts from the proposition that "the sovereign has no earthly judge." Book I, Ch. III, p. 15. Having referred to a number of arbitrations, he says: "But why do I multiply examples, as if any one could not call to mind a great number of such occurrences in every age? Why, to be sure, in order that those who avoid this kind of contest by arbitration and resort at once to the other, that is, to force, may understand that they are setting their faces against justice, humanity, and good precedent, and that they are rushing to arms of their own free will, because they are unwilling to submit to any one's verdict": p. 16.

⁶⁶ Grotius, *De Jure Belli Ac Pacis*, Translated by Francis W. Kelsey, *The Classics of International Law*, Edited by James Brown Scott, Vol. II, 1925, Book I, Ch. I, paragraph 14. Phillipson's *Introduction*, p. 22a.

is called the father of positivism for the emphasis given by him to customary international law.⁶⁷ Without any attempt to trace the development of the doctrine of the will of states as the basis of international law, it may be useful to conclude this brief survey with a few remarks about Vattel. Vattel, regarded as a Grotian, still maintains the distinction between different types of branches of the Law of Nations. Within the positive law of nations, based on the agreement of nations, he differentiates three divisions: the voluntary, the conventional, and the customary law. The voluntary law proceeds from their presumed consent, the conventional law from their express consent, and the customary law from their tacit consent. Positive international law is distinguished from the natural or necessary law of nations which Vattel undertakes to treat separately. In order to understand the respective functions of natural and positive international law Vattel draws the following distinction:

But after having established on each point what the necessary law prescribes, we shall then explain how and why these precepts must be modified by the voluntary law; or, to put it in another way, we shall show how, by reason of the liberty of nations and the rules of their natural society, the external law which they must observe towards one another differs on certain points from the principles of the internal law, which, however, are always binding upon the conscience.

With these nice distinctions in mind one may ask legitimately what precisely is the role of these branches of the law of nations with respect to the conduct of states in relation to one another. Vattel leaves no doubt about it, for he declares that while the necessary law is at all times obligatory upon the conscience, and that a nation must never lose sight of it when deliberating on the course it must pursue in order to fulfill its duty, it must consult the voluntary law "when there is question of what it can demand from other states."⁶⁸ It may not be unreasonable to conclude that according to Vattel only those rules of the law of nations which proceed from and are based on the consent of states are enforceable in international relations. This rather significant feature of Vattel's doctrine, it is believed, may not have entirely escaped the attention of diplomats to whom it was addressed, and it may, therefore, account at least partially for his immense popularity. But Vattel's international law is no longer above but beside the diplomat.⁶⁹

Although he does not rank as a strict positivist, Vattel prepared the ground for the era of uninhibited positivism. He helped to establish,

⁶⁷ L. Oppenheim, *International Law*, 5th ed., edited by H. Lauterpacht, 1937, Vol. I, p. 87.

⁶⁸ E. Vattel, *The Law of Nations*, translated by Charles G. Fenwick, *The Classics of International Law*, Edited by James Brown Scott, Vol. III, 1916, p. 9.

⁶⁹ Albert de Lapradelle's introduction to the above edition of Vattel, Vol. III, p. liv: "Writing for courts and for the leaders of nations, he could only place law beside diplomacy as wise counsel; he could not set it above diplomacy as a strict rule."

precisely because of his popularity, perhaps more than any of his predecessors or successors, the consensual character of international law and to reduce natural law from the function of supplying an objective basis for the validity, the binding force, of the law of nations to the function of supplying rules for filling gaps in positive international law. This distinction between the dual function of natural law in relation to the law of nations is not always observed and yet it would seem to deserve close attention.

The development of international law along the lines indicated above, was bound to influence the concept of an international society of states. In the course of time it became purely formal. *Ubi ius, ibi societas*. Those who argued the existence of a law of nations accepted the use, though rarely more, of the phrase, "Family of Nations." In the period following the Peace of Westphalia the development of international relations would seem to have followed decidedly not the conception of an objectively founded international law and community of Victoria but that indicated in the teachings of Suárez, if indeed it be accurate to assume an essential difference between their doctrines.⁷⁰ From the 18th century and, in particular, from Vattel onward, however, there can be no doubt as to the trend of the development. It was predominately positivist and consensual. The will of states seems to explain both the contents and the binding force of international law. The concept of the Family of Nations recedes in the background.⁷¹ To have paved the way for this development

⁷⁰ Scott, *The Spanish Conception of International Law and of Sanctions*, 1934, p. 91: "If the two passages (quoted above in the text), however, be compared from the standpoint of international law, the statement of Suárez seemed to lack that sense of ultimate completeness which always seems to have been in the mind of Victoria; his is not merely an international community with law, but it is an international community with a power to create law and to punish the violations of that law. It may well be that the presence of law in Suárez' community implies both the right consciously to create and the power to preserve that law inviolate; but neither the right nor the power are express, as in the case of Francis of Victoria's international community. For does not Victoria say expressly that the *jus gentium* has 'the force of a pact and agreement among men'? Whereas Suárez implies in the succeeding chapter of this very book that the law of nations may have been introduced simply through 'usage and tradition, . . . and without any special and simultaneous compact or agreement on the part of all peoples.' This conception of Suárez looks to an inorganic association; Victoria's conception looks to an organized society, with a law of nations having the force of a pact, the obligations of which are enforceable, not merely under the law of nations but under the natural law."

⁷¹ Lapradelle, as cited, p. liv: "It would be vain to look in his work for a reflection of the fine passage of Suárez on the solidarity of nations; but, on the other hand, it would be too much to require in a diplomat of the end of the eighteenth century, even though he were permeated with the spirit of the Encyclopaedia, the same freedom of speech as in a monk of the sixteenth. Vattel, who does not develop to any great extent the idea of arbitration, would probably have no place as an organizer of the society of the future."

by liquidating, with a degree of apparent finality, the idea of the Middle Ages of an objective order of things personified by the Emperor in the secular realm, would seem to be one of the more vital aspects of the consequences of the Peace of Westphalia and of its place in the evolution of international relations. Viewed in this light the answer to the question formulated above cannot be doubtful. Instead of heralding the era of a genuine international community of nations subordinated to the rule of the law of nations, it led to the era of absolutist states, jealous of their territorial sovereignty to a point where the idea of an international community became an almost empty phrase and where international law came to depend upon the will of states more concerned with the preservation and expansion of their power than with the establishment of a rule of law. In the period immediately following the Peace, of the objective validity of international law there may be some doubt. Of the subjective character of much of modern international law there can hardly be any doubt.⁷²

It may be said, by way of summary, that on the threshold of the modern era of international relations there were two doctrines with respect to the binding force of international law and the existence of an international community of states. The doctrine of Victoria is characterized by an objective approach to the problem of the binding force of international law and by an organic conception of the international community of states. The other doctrine, characterized by the voluntaristic conception of the binding force of international law, is adumbrated in the work of Suarez.^{72a} It is developed in the writings of Gentili, Grotius and Zouche, and it breaks to the fore in the work of Vattel who, emphasizing the independence rather than the interdependence of states, wrote the international law of political

⁷² Emphasizing the destructive character of Vattel's elegant doctrine of the law of nations, Van Vollenhoven concludes: "Henceforth, there will be not merely no positive law, even on a limited scale, there will be not merely the claims of the governments to a limitless sovereignty; from that time onward there will be a nominal law of peace, exacting in character, elaborated in detail, full of celestial principles and unctuous rhetoric, but one that is rendered utterly futile by the reservation, ceaselessly reiterated, that it is for the sovereign states to judge the extent to which those principles and that rhetoric shall bind them in the sphere of reality." *The Law of Peace*, p. 107 f. See also J. L. Briery, *The Law of Nations*, 1936 (2d ed.), p. 32.

^{72a} Joseph Delos, *La Société Internationale et les Principes du Droit Public*, 1929, p. 229 f: *Considérable dès son vivant, traditionnelle aujourd'hui encore, l'oeuvre de Suarez a dépassé de beaucoup le cercle des théologiens. Suarez est, lui aussi, l'un des Fondateurs du Droit International, le plus connu peut-être, et l'un de ceux qui ont le plus influé sur les destinées de la doctrine. Son rôle dans de conflit du Droit à fondement objectif et du Droit subjectif, nous semble avoir été décisif à plus d'un égard. Son oeuvre offre de plus le cas topique que nous cherchions: elle permet de saisir, à un moment donné, et particulièrement important, puisqu'il se place aux origines mêmes du monde moderne, la cause du mal dont souffre la science politique internationale: la substitution du point de vue volontariste au point de vue du Droit à fondement objectif.*

liberty.^{72b} The growth of the voluntaristic conception of international law is accompanied by a weakening of the notion that all states form and are part of an international community. It is still very strong in the writings of Suarez and Gentili, although it seems to have assumed a character different from that attributed to it by Victoria. The test of the strength of the community doctrine may be said to have come in the seventeenth century. The liquidation of the universalistic claims of the Empire and the recognition of a multiplicity of states wielding the same powers as those hitherto reserved for the Emperor should have created a political and juridical condition favorable for the establishment of a genuine society of states. The opportunity which may have existed at the end of the Thirty Years' War for substituting a new order based on the impersonal supremacy of international law for the old order based on the personal supremacy of the Empire, was not, however, utilized. Instead of creating a society of states, the Peace of Westphalia, while paying lip service to the idea of a Christian commonwealth, merely ushers in the era of sovereign absolutist states which recognized no superior authority. In this era the liberty of states becomes increasingly incompatible with the concept of the international community, governed by international law independent of the will of states. On the contrary this era may be said to be characterized by the reign of positivism in international law. This positivism could not admit the existence of a society of states for the simple reason that it was unable to find a treaty or custom, proceeding from the will of states, which could be interpreted as the legal foundation of a community of states. In the nineteenth century, after the Napoleonic wars, there may be discerned in the Congress and Concert system the beginning of a conscious effort to establish a community of states based on the will of all states or at least on the will of the Great Powers. The Hague Peace Conferences, the League of Nations and, we may confidently assert, the United Nations are further stages in this development cognizable by positive international law.

This reaction against the unrestrained liberty of states, recognized as self-destructive in its ultimate implications was accentuated by a reaction against the prevailing voluntaristic conception of international law. The attempts to provide international law with an objective foundation, without, however, abandoning altogether the will of states doctrine, are illustrated by Bergbohm's and Triepel's theory of the *Vereinbarung*. A radical departure from the consensual view of international law is characteristic of Kelsen's theory of the initial hypothesis, and of the recent revival of natural law thinking in the field of international law. Other writers follow this trend away from the purely consensual nature of international law by emphasizing the role of *pacta sunt servanda* as the fundamental norm in international law. Others still suggested that international law

^{72b} Lapradelle, as cited, pp. liv, lv.

is based on the maxim *voluntas civitatis maximae est servanda*.¹³ The sociological interpretations of the binding force of international law should not be forgotten in this connection. It is common to all these schools of thought that they strive to vindicate for international law a binding force, independent of the will of the states and to substitute for the doctrine that international law is a law of coordination, the old-new doctrine, that international law is, and, if it is to be law, must be, a law of subordination, that is, a law above states.

An international law thus conceived could be interpreted as a law of an international community constituting a legal order for the existing states. It would seem doubtful, however, whether this result can be achieved without the creation of some new institutions or the strengthening of existing institutions. It was pointed out that the efforts to establish the binding force of international law independent of the will of states are bound to cause international lawyers to advocate the creation of an international legislature or, as a very minimum, of an international tribunal endowed with compulsory jurisdiction over disputes between states. While the creation of an international legislature would be concomitant with the formation of a super-state "the objective ascertainment of rights by courts is one (manifestation of the legal nature of international law) which could be effected within the frame of the existing practice and doctrine of international law."¹⁴ The absence of an international court of justice with compulsory jurisdiction over disputes between states does not merely strain the legal character of international law to the breaking point.¹⁴ In truth, it would seem to jeopardize altogether the conception of international law as a body of rules governing the conduct of states.

The history of the past three hundred years tends to show that international law, increasingly separated from its roots in right reason and natural law and deprived of its sources of objective and heteronomous validity, could but inadequately perform the task which devolved upon it following the disappearance of the secular rule of the Empire and its aspiration to be the Universal Monarchy envisioned by Dante. Such an international law, rugged individualism of territorial and heterogeneous states, balance of power, equality of states, and toleration,—these are among the legacies of the Settlement of Westphalia. That rugged individualism of states ill accommodates itself to an international rule of law reinforced by necessary institutions. It would seem that the national will to self-control which after a prolonged struggle first threw off the external shackles of Pope and Emperor is the same which *mutatis mutandis* persists today in declining any far-reaching subordination to external inter-

¹³ H. Lauterpacht, *The Function of Law in the International Community*, 1933, p. 421. A brief survey of recent doctrines on international law will be found on p. 415.

¹⁴ Lauterpacht, p. 426.

national controls. It was one of the essential characteristics of the League of Nations and it is one of the chief weaknesses of the United Nations.

The approaching tercentenary of the Peace of Westphalia would seem to invite a thorough reëxamination of the foundations of international law and organization,⁷⁵ and of the political, economic, ideological and other factors which have determined their development. It may not be unreasonable to believe that such a broad inquiry, along with important insights into the forces which have shaped in the past and which shape at present the course of international law and organization, might also yield some precise data regarding the ways and means of harmonizing the will of major states to self-control with the exigencies of an international society which by and large yearns for order under law.

⁷⁵ Such a revision has been proposed by Dr. Lauterpacht in a different context: p. 437.

THE INTERNATIONAL FRONTIER

By H. DUNCAN HALL *

1. *The Nature of the International Frontier*

The international frontier is formed by the zones where Great Power interests come together in conflict. It is the main line of structural weakness in the earth's political crust—the main fissure where wars break through. The powers are constantly at work on the frontier trying to patch up the peace by international arrangements of various kinds.

The conception of the international frontier cannot be stated in a sentence. It will emerge from the analysis that follows. But broadly speaking, it is the zone in which the Great Powers expanding along their main lines of communication to the limits of their political and economic influence and defense needs, impinge upon each other in conflict or compromise. It is the debatable no man's land into which the interests and policies of more than one Great Power penetrate, in which they compete for power and influence but in which no one power is supreme. For once a Great Power becomes supreme in an area, even if it is not fully "sovereign" from a legal point of view, that area can hardly be said to fall within the zone of the international frontier. Thus American power and diplomacy, as expressed in the Monroe Doctrine (with British support), remove the Latin American continent from the international frontier. So likewise the sub-continent of India, with its congeries of peoples and states, was removed for a century and a half from the international frontier by British power, and given also peace between its races and life for its minorities. Historically the international frontier began to emerge in the 16th and 17th centuries. It grew with the extension to the New World and South and East Asia of the rivalries of the then major continental powers, Spain and Portugal, Britain, France, and Holland, and the gradual convergence of the contemporary Russian landwise expansion.

The relation between the ordinary national frontier and the international frontier is not easy to define. A national frontier of a Great Power may coincide in part with a sector of the international frontier. But in general the international frontier is a zone that lies beyond the national frontiers and does not necessarily touch them at any point. When Mr. Stanley Baldwin, before the House of Commons in 1934, spoke of the Rhine

* Formerly of the League of Nations Secretariat and now working on the British official war histories, Washington, D. C. This article is of course written in a purely personal capacity. It is used in a slightly different form as the first chapter of a volume on *Mandates, Dependancies, and Trusteeship* to be published by the Division of International Law of the Carnegie Endowment for International Peace early in 1948.

as "where our frontier lies today," or when General Carl Spaatz spoke of an American "Arctic frontier," the reference was to the international frontier.¹

It has long been recognized that the expanding national frontier in the case of certain states such as the United States has exercised a major influence on the national life—political, economic, and cultural. The international frontier has exercised a no less profound influence in modern history on the relations of the States and peoples of the world. It has also been a major factor in the development and shaping of international arrangements and institutions.

The international disputes that have come before the League of Nations or its successor have flared up mostly at points along the international frontier. Most of the main crises and eruptions of world politics in modern history have been linked with that frontier. As a volcano in a local vent for widespread pressures in molten depths of the earth, so an outbreak on the international frontier, in some so-called frontier incident, is rarely a local phenomenon but can usually be traced back to pressures deep down within the states concerned.

A zone of conflict between the Great Powers forces them to compromise. The international frontier is thus not only an area of international conflict; it has also produced—as will be seen below—nearly all the international territorial regimes in modern history as well as many other international arrangements of various kinds. Such arrangements, which can be classified together as phenomena of the international frontier, have usually had as their objectives the preservation of the general peace, the securing of law and order in otherwise unstable areas, of proper conditions of life for the local inhabitants, and the facilitating of normal international intercourse in matters of trade, travel, and cultural relations.

Geographical factors such as lines of communication play some part in determining the location and extent of parts of the frontier. It is mostly pure coincidence, though not without symbolical interest, that a fairly typical list of such arrangements can be read off along the line of the Great Rift Valley. The immense unstable line of the Rift Valley runs from Lake Nyasa, past the rock walls of Abyssinia, through the Red Sea, the Gulf of Aqaba, the Dead Sea, and the Jordan Valley. Sunken valleys, deep narrow lakes and seas, mark the Rift. Flanking volcanoes—Ruwenzori and Kilimanjaro—are vents for the eruptions that accompanied the faulting along the Rift. Politically the line of the Rift System, from end to end, from Nyasaland to the Jordan Valley, is a line of typical phenomena of the international frontier: Great Power rivalries and conflicting spheres of influence, miti-

¹ "As we fabricated this budget we had constantly in mind the concept of an Arctic frontier."—General Carl Spaatz, *Hearings before the Subcommittee of the Committee on Appropriations, House of Representatives, Eightieth Congress, First Session, on the Military Establishment Appropriation Bill for 1948* (Washington, 1947), p. 601.

gated by various forms of compromise arrangement. The list, reading from south to north, is as follows: the mandates (now trusteeships) of Ruanda Urundi and Tanganyika; the Uganda Protectorate; rivalries and spheres of influence over Abyssinia; Eritrea, in turn Turkish, Egyptian, Italian, and now projected international trusteeship; rivalries of Britain and France over Egypt and the valley of the Nile culminating in the Fashoda incident; the condominium of the Sudan; the former condominiums and protectorate over Egypt; the neutralized and demilitarized Suez Canal, with its international regime; the mandates over Transjordan, Palestine, and Syria; the projected international trusteeship regime for Jerusalem; the checkered history of Alexandretta, in turn Turkish territory, League mandate, international regime, and again Turkish territory. (As we shall see, the line of phenomena of the international frontier continues historically through Anatolia, along the Straits, through the Balkans, and thence on to the Baltic and even to the Arctic.)

The international frontier is more than a geographical zone or series of zones. It is a composite of frontier zones of other kinds—political ideological economic, scientific, all closely interrelated. All these frontiers broadly coincide. But some are much more sharply defined than others. Some are merely broad areas of movement in one general direction, like ocean currents that continue to move forward despite constant shifting and changing with wind and tide and temperature. Politically the international frontier may fluctuate with changes in the political policy of a major power which advances or contracts the area of its political activity. A major act of policy like American aid to Greece and Turkey can fuse together all aspects of the frontier: geographical, political, economic, ideological. (It was a sign of the all-prevailing influence of the international frontier that when a United Nations Commission of Inquiry was sent to report upon this sector it was found to be itself divided by the frontier.)

The international frontier has played historically and still plays a highly important part in international economic relations. In greater or less degree it has been a limiting factor in the expansion of world trade and private investment. The opening up of great new areas to freer world trade, and the continued holding open of the door, in such frontier regions as the Levant, North and Central Africa, Southern Asia and China, became a leading factor in the relations of the powers in the hundred years that began with the Anglo-Turkish treaty of 1838. Private investment and trading on a large scale in the unstable zones of the frontier became possible in the nineteenth century only through a system of internationally recognized safeguards for foreign nationals. These safeguards have been abandoned in the main, so that private foreign investment in such areas is largely a thing of the past. Under what were sometimes called capitulations, foreign courts had extraterritorial jurisdiction over nationals living and working in the country. Other expedients included leased zones, international settle-

ments, and customs receiverships. Capitulations or other allied arrangements existed at various times in Turkey, Egypt, Tunis, Morocco, Tangier, Congo Free State, Liberia, Madagascar, Siam, China, and Japan² Uncertainty as to the legal and political status of an area, even where a single power is *de facto* supreme as in a mandated area, has proved a constant deterrent to investment and development.

In the field of science the intrusion of the international frontier is not a new phenomenon, but the intrusion was never more patent than today. The atom bomb and other discoveries have shattered the idea that "science knows no frontiers." Certain areas of science now come under the significant heading of "defense science" and are governed by regulations and understandings imposed by danger from beyond the international frontier. As if in penance for their probing of the innermost secrets of nature, wherever two or three physicists are gathered together they discuss under the inevitable shadow of the frontier.

Geographically, the international frontier is formed by the linking up in our own time of several older frontier zones in which the interests of the powers conflicted. The main zones of contact between the powers were Central Europe, Africa, the Mediterranean, the Near, Middle and Far East, and a broad area through the Western Pacific from the Arctic to the Tasman Sea. These were the areas where the separate expansions of the powers (of the western European states outwards from Europe, across the oceans and landwise into Africa, from the seventeenth century onwards, as well as the land expansions of Russia, the United States, and Japan) met and overlapped. *Nos frontières marchent avec nous* was the often quoted phrase of a Russian general in the 1880's. The limit of such freely moving frontiers was reached in the twentieth century. As the American settlers moved westwards until all free land was taken up, so the expansions of the powers by land and sea reached the point where there were no more lands in the world to be had freely for the taking without war. Territorial expansion was no longer available as a means of relieving tensions or giving what was known in diplomatic language as compensation. The fusing of these separate zones into a single international frontier is the inevitable consequence of the world-wide extensions of the political, ideological, and economic range of the super-powers, as well as of the transoceanic range of modern weapons.

The international frontier is more than the geographical, political, and ideological line on which the super-powers meet. It is the line on which abut the policies of all the lesser states of the world because of their relations with the super-powers.

The relations of Great Powers may be those of stable friendship, even

² W. E. Hall, *International Law*, Eighth Ed., pp. 60-62. Germany "renounced the regime of the capitulations" in Morocco and Egypt by Articles 142, and 147 of the Treaty of Versailles.

to the sharing of strategic positions such as the American bases in British Atlantic islands. If Britain and America have a frontier between them on the Atlantic it has come to be of the nature of the unfortified Canadian-American border. Moreover, a long historical relationship of friction at many points of contact in various parts of the world can change into one of friendly cooperation, as happened with Britain and France from 1904 onwards.

The main geographical belt of the international frontier now runs in a vast circle round Eurasia from occupied Germany to occupied Japan—a circle completed through the Arctic. Lesser belts in western Europe and the Pacific form part of the system. It is the familiar zone of each morning's newspaper headlines. From it come the steady visible stream of dispatches from overseas correspondents, reporting the pressures, the temperatures and the eruptions on the frontier—including the debates and votes in the organs of the United Nations. From it come also the steady invisible stream of dispatches and intelligence to the Chanceries. Nuances of policy, variations in propaganda lines, evidence of economic booms and depressions, the condition of foreign markets and investment, major technical advances in industry, new inventions, the discovery or utilization of new resources, morale, the relations of management and labor, the state of the nation—are all reviewed and weighed continuously in terms of the international frontier.

2. *The State System, the Balance of Power, and Mandates*

It is not possible to examine here all the aspects and implications of the international frontier. Its history forms a large part of the history of the relations of the powers. This study will deal with a single aspect. Its theme is the persistent breaking out along the frontier over the past hundred years, and never more impressively than today, of certain characteristic and closely related phenomena. These include neutralization and demilitarization, 'condominiums, international mandates and trusteeship, and other forms of international territorial regimes and arrangements. In the past such regimes have not been grouped normally with mandates and trusteeship, which have been regarded almost as an unrelated species.

That international mandates and trusteeship are largely by-products of the working of the state system of the world, of the political relations of the powers, and thus factors in the balance of power, has never been sufficiently recognized. The tendency has been to explain them historically as in the main a product of humanitarianism and of liberal idealism. But these in fact have played a secondary rather than a primary rôle.

Mandates and trusteeship, and the other varieties of the species to which they belong, have flourished in a kind of international no man's land. The characteristic of such no man's land is the absence or breakdown of

(a) *The Merging of Zones into a World Frontier*

In the world of the League of Nations these great frontier zones, though clearly related (if only because the same Great Powers were to some extent involved simultaneously in all areas), could still be regarded as relatively distinct. In the world of the United Nations what was regional has become global. The zones have merged into a single world frontier. International disputes brought before the United Nations; problems encountered in the making of peace treaties with ex-enemy states, and in economic rehabilitation by the powers of shattered areas; special spheres of interest and rival claims to territory; and trusteeship discussions (whether in relation to old mandates or new ex-enemy territories)—all show the existence and characteristics of the international frontier. Physically, as we have seen, the main zone of the frontier now runs in a great arc around Eurasia from occupied Germany to occupied Korea and Japan, and the circle is completed through the Arctic. As these words are written, occupied Germany is a sort of four-power condominium. Suggestions have been made in various quarters for United Nations trusteeships or mandates to individual powers (or international regimes of a still undefined character) at key points of great strategic and economic importance in the eastern or western frontier zones such as the Ruhr, the Saar, and Upper Silesia.

(b) *The International Frontier in the Mediterranean and Middle East*

Along the main Mediterranean-Middle East frontier zone at many points there have been many international arrangements, most of them with some mandatory or trusteeship features. Examples running historically west to east include the following: (a) The international regime in Tangier (set up in its present form in 1923 on the basis of an earlier treaty, revised in 1928 and restored in 1945). Tangier is administered by an international municipal body, with provision for the open door, capitulations, and neutralization.^{11a} (b) The principle of international responsibility established in Morocco by the General Act of the Conference of Algeciras in April, 1906, as exemplified in the police mandate given by the powers to France and Spain to be exercised under a Swiss Inspector General. (c) The mandate conferred by Russia, Prussia, and Austria in 1815 on Great Britain in respect of the government of the Ionian Islands,¹² and many other Adriatic examples, some of which are mentioned below. (d) The special international regime provided for Crete by the Concert of Europe in 1897-98 (by which the island, still nominally under the Sultan of

^{11a} In the Potsdam Agreement the UK, the USA and the USSR agreed that the International Zone of Tangier "which includes the City of Tangier and the area adjacent to it, in view of its special strategic importance, shall remain international." (Text in *New York Times* March 25, 1947) and W. K. Miscellaneous NO6, 1947.

¹² The islands were ceded to Greece in 1864 on the condition of permanent neutralization.

Turkey, was given an autonomous regime that lasted till the World War; government was by a governor, appointed by the powers after prolonged disagreement; he made quarterly reports to them and they supplied troops for police purposes and made initial grants towards the cost of government).¹³ (e) The Cyprus convention of 1878. (f) The mandate given by the powers to France to intervene in the Lebanon in 1860 to protect the Christian minorities (which was the historical antecedent of the League of Nations mandate given to France in the same area by the Allied and Associated Powers in 1920). (g) The League of Nations mandates for Syria, Palestine, and Iraq (and the case of Alexandretta mentioned above) which were thus a continuation of a long historical process.

The direct continuity between the earlier nineteenth-century mandates and minority regimes and the mandates of the League of Nations was very clear in the case of Palestine. It was the Jewish problem as a whole, the problem of Jewish minorities everywhere, that produced in the minds of Lloyd George and President Wilson, at the Peace Conference in 1919, the idea of the complementary solutions of (a) the minority treaties in the succession states and (b) the mandate for Palestine.¹⁴ Soon after the outbreak of the war, the idea of the return of the Jews to Palestine began to be discussed in London—the idea that finally crystallized in the Balfour declaration of 1917 regarding the Jewish National Home and in the mandate. It was the mandate to France of 1860 and the mandatory regime set up by the powers in Crete in 1897 (referred to above) that Sir Edward Grey regarded as the best precedents for a solution of the Palestine problem.¹⁵

Other examples of international arrangements, on the southern fringes of the Turkish Empire, were: the international regime of the Suez Canal, the Anglo-French condominium of 1879–82 in Egypt, and the Anglo-Egyptian condominium in the Sudan from 1899 onwards. The relations of the powers to Egypt from the seventies is a major source for the early history of the mandate idea. In the heartland of Turkey itself the Supreme Council in 1919 proposed to set up a whole series of mandatory regimes. Anatolia was to be divided between France and Italy in two separate mandates; Greece was to have a mandate in the hinterland of Smyrna; the United States was to be the mandatory for Constantinople and the Straits, as well as for Armenia. The political vacuum caused by the collapse of the military power of Russia led to further projected mandates running deep into the Russian borderlands as far as Transcaucasia, for which Italy for a moment accepted a mandate and then on wiser

¹³ G. P. Gooch, *History of Modern Europe 1878–1919*, London, 1923 pp. 244–54. The withdrawal of international troops began in 1908.

¹⁴ *For. Rel. of U. S., Paris Peace Conf. 1919*, Vol. V, pp. 393–95.

¹⁵ Rt. Hon. Viscount Samuel cites a conversation to this effect on February 5, 1915. *Grooves of Change: A Book of Memoirs*, New York: Bobbs-Merrill, 1946, p. 176.

thoughts withdrew. In the end nothing came of these projected mandates. The United States Senate rejected the mandate for Armenia in June, 1920. The Great Powers were reluctant to extend their responsibilities into such quicksands. Finally, the revived military power of Turkey under Mustapha Kemal warded off foreign intrusion, whether in the form of League of Nations mandates or otherwise. Under the Treaty of Lausanne of 1923, modified by the Treaty of Montreux in 1936, the Straits were placed under an international regime—though of a much milder kind than that applied to the other great entrance to the Mediterranean once held by Turkey, the Suez Canal Zone. The Straits—goal of Russian policy for centuries—form an ancient frontier between Russia and Turkey, Asia and Europe, and has never for long been free from eruptions. Treaties regulating the Straits run back to the late eighteenth century. Plans for the revision of the Montreux Convention, accompanied by Russian claims on Turkey, have recently been under discussion between the powers.¹⁶ The Dodecanese Islands commanding the Dardanelles were demilitarized by the peace treaty with Italy of February, 1947.

(c) *The International Frontier in Eastern and Western Europe*

More than a generation earlier the northern frontiers of Turkey in Europe had formed the subject of a highly interesting series of international mandates or regimes with mandatory features. There were devised by the powers at the Berlin Congress of 1878 for Eastern Roumelia and Bulgaria, and, in another form, for the former Turkish provinces of Bosnia and Herzegovina.¹⁷ In the decade from 1897 a somewhat similar series of attempts were made by the powers to deal with the troubles in Macedonia, caused by Turkish misrule and the incursion of armed bands from neighboring Christian states.¹⁸ All these schemes were the prototypes of the "A" mandates devised forty years later for Turkey's detached Middle East provinces. Mandates and trusteeship ideas were thus an old story in Turkey. From the seventies onwards the Concert of Europe tried to deal with the problems caused by the decay of Turkish power and misrule by devising scheme after scheme for reforms. The schemes were inspired by ideas of trusteeship and collective responsibility and their machinery was full of mandatory features as in the case of Crete mentioned above. Several of them aimed at the protection of particular minorities like the Armenians—and in doing so marked them for destruction.¹⁹ Though the

¹⁶ *Department of State Bulletin*, Sept., 1946, pp. 485-86, and Nov. 3, 1946, pp. 790-805, and Jan. 26, 1947, pp. 143-51, and the Potsdam Agreement.

¹⁷ W. N. Medlicott, *The Congress of Berlin and After*, London, 1938, pp. 71-86, and Chapters VI, VII and IX.

¹⁸ Gooch, pp. 399 ff.

¹⁹ Article 61 of the Treaty of Berlin obliged Turkey to take measures to protect the Armenians: "It will periodically make known the steps taken to this effect to the Powers who will superintend their application."

schemes came to nothing they are of importance for the history of the international frontier and trusteeship.

The northward extension to the Baltic of the east European frontier zone is marked by many characteristic frontier devices: such as the minority regimes established after the first World War in the succession states; the regimes set up in Upper Silesia, Vilna territory, the Free City of Danzig. Danzig, largely German in population but commanding Poland's access to the sea, was made a sort of League protectorate. Responsibility for its defense and foreign relations was assigned to Poland, and the League High Commissioner served as arbiter between Poland and the Free City. An even more interesting relic of the international frontier was the forgotten Polish mandate of 1919 in Eastern Galicia now published in the Paris Peace Conference records. In the end this mandate, which was a fully elaborated legal draft, was swallowed up in the Polish minority treaty when the area was finally absorbed by Poland.²⁰ Farther north, at the head of the Baltic, were the neutralized and demilitarized Aaland Islands (1921 and earlier in 1856). To the extreme north, right in the Arctic itself, was Spitzbergen without permanent inhabitants but with valuable resources and strategic importance. Spitzbergen was first suggested as a Norwegian mandate. It was finally placed by the Spitzbergen treaty of February 9, 1920, under Norwegian sovereignty. Under the special trusteeship provisions of the treaty it was demilitarized and held open freely to the enterprise of the world.²¹ Twenty-seven years later Spitzbergen had become still more unmistakably a major point on the world frontier between the powers, and both the Arctic and the Antarctic had become zones of the international frontier. The wheel had come full circle.

The western edge of the central European frontier zone is another fertile breeding ground for arrangements characteristic of the international frontier, including a series of trusteeships, or of international regimes with some mandatory features. They were due partly to wars and political crises of the distant past; but the main eruptions came in the periods of resettlement of the frontier following the first and second world wars. The southern part of the frontier line runs through the Adriatic, the

²⁰ The area was ceded by Austria under the Treaty of St. Germain to the Allied Powers. Poland had occupied the territory and it was finally assigned to her in 1923. The draft statute resembled the mandate envisaged for the Saar. See *For. Rel. of U. S., Paris Peace Conf.*, Vol. IX, pp. 115 and 272-83 (text of mandate). Also Vol. IV, p. 848, and Vol. VII, p. 280.

²¹ "As the archipelago is actually a territory not belonging to anyone," the Supreme Council's Spitzbergen Commission reported, "everyone agrees upon the necessity of ending this state of affairs by giving it a definite status." As a substitute for a mandate, which various powers proposed, it adopted the Norwegian proposal of a multilateral Treaty to which would be parties "all powers having interests in Spitzbergen." *For. Rel. of U. S. Paris Peace Conf. 1919*, Vol. VIII, pp. 351-63. Also Vol. VII, p. 39. For the text of the Treaty see Malloy, *Treaties*, Vol. IV, p. 4861, and Great Britain, *Treaty Series*, 1924, No. 18.

ancient line of cleavage in the Roman Empire and the Catholic Church; the line between the Slav, the Teuton, and the Latin; the scene, since the first Greek outposts in Italy in the pre-Christian era, of innumerable frontier clashes and adjustments, buffer states, neutralized and demilitarized areas, international regimes, mandates and trusteeships. After the first World War there was an abortive Italian mandate for Albania. In the period between the Balkan wars and the peace settlement following the first World War, Albania (as befitted an area formerly part of the Turkish Empire) passed in turn through the following phases: (1) an international regime of the type devised by the Berlin Congress for Bulgaria and Eastern Roumelia; (2) partial annexation; (3) a "small autonomous neutralized state" in central Albania under Italian protection; (4) an Italian protectorate; (5) a projected mandate; and finally (6) independence and admission, in December, 1920, to the League of Nations.²² The proposed Italian mandate for Albania, as well as those for southern Anatolia and Transcaucasia, were expressly devised as compensations for Italy in an endeavor to secure a settlement over Fiume.²³

The head of the Adriatic provided in 1919 as in 1946 one of the major controversies of the peace settlement. The battle over Trieste in 1946—or at least its first phase—ended in the hard fought compromise of an international regime set out in the Permanent Statute of the Free Territory of Trieste. To prevent its becoming a perpetual bone of contention between the powers, Trieste was to become under the Statute an international dependency of the Security Council and to be neutralized and demilitarized. The Governor-General (if and when the Security Council could agree on a nomination) was to represent and be responsible to the Security Council to which he was to make annual reports. In the battle of Fiume in 1919–20, many different solutions were proposed and rejected—demilitarization along with certain Adriatic islands and Dalmatia, annexation to Italy, a "free city" like Danzig, with League mandates in the neighboring cities of Zara and Sebenico.²⁴ The crisis ended with Italian annexation, which was accepted by Yugoslavia under the agreement of January 27, 1924.

The defeat of Italy in the Second World War led to three typical phenomena in the Adriatic frontier zone and Italy's extension into Africa: (1) the special Security Council trusteeship over Trieste mentioned above; (2) the demilitarization of Italian or Yugoslav islands in the Adriatic (a

²² Temperley, Vol. IV, pp. 339–45. *For. Rel. of U. S., Paris Peace Conf. 1919*, Vol. VI, pp. 78–91, and Vol. VIII, pp. 228–29. The Albanians preferred a United States mandate: Vol. XI, p. 423.

²³ Malloy, Vol. V, p. 107.

²⁴ The Free City proposal provided for the open door, minority rights, and a plebiscite at the end of fifteen years. It was to be "somewhat similar to the Saar Valley settlement" (Lloyd George), Vol. V, pp. 136, 218–19.

continuation and extension of the demilitarization imposed after the first World War) and of the small Italian islands between Italy and Africa; (3) and, in the extensions of Italy into Africa, the projected trusteeships for Somaliland and for Libya and Eritrea, strategically situated in Africa and on the Narrows of the Mediterranean and the Red Sea.

Higher up along the western European frontier zone was the Saar Territory, a disputed border area between France and Germany which was placed in 1919 under a direct League of Nations trusteeship for fifteen years.²⁵ This complete League trusteeship was an alternative to a direct French mandate, which was the first proposal considered by the Peace Conference.²⁶ Under the League Council's instructions the Governing Commission's sole interest was "the welfare of the inhabitants." It was responsible to the League for the execution of its mandate and had to render quarterly reports to the League Council. It was "not answerable to the population." The right of petition was recognized.²⁷ The territory was demilitarized. It was thus in all respects a complete League Trusteeship under direct League administration.

On either side of the Saar Basin stood still other international landmarks pointing to earlier international settlements along the frontier; the neutrality of Switzerland recognized by the powers at the Congress of Vienna in 1815 (but stretching back to the Treaty of Westphalia of 1648) and the shorter-lived neutrality of Luxemburg and of Belgium.

(d) *The International Frontier in the Pacific and Far East*

In the frontier zones of the Pacific and the Far East the same characteristic frontier phenomena have appeared. Southernmost is the Anglo-French condominium in the New Hebrides of 1906 which consolidated earlier arrangements; further north are the League of Nations mandate and the United Nations trusteeship held by Australia in New Guinea. To the east was the tripartite condominium regarding Samoa (between Germany, Britain, and the United States) which lasted for a decade from 1889 and, *inter alia*, proclaimed Samoa neutral territory. It was followed by German and American annexation of the two halves of the archipelago, and then, twenty years later, by the turning of the German half into the New Zealand mandate, now United Nations trusteeship. To the north of Samoa a new Anglo-American condominium appeared in 1939 in the islands of Canton and Enderbury, important points on the trans-Pacific air routes. In the

²⁵ By the Treaty of Versailles (Art. 49) Germany renounced government of the Saar in favour of the League "in the capacity of Trustee." Territorial adjustments without trusteeship features are of course characteristic of the major frontier zones, as in the classic case of Alsace-Lorraine. But an international regime may be an intermediate stage, as in the case of Alexandretta.

²⁶ *For. Rel. U. S., Paris Peace Conf. 1919*, Vol. V, pp. 61; 66-70.

²⁷ League of Nations Secretariat, *Ten Years of World Coöperation*, 1930, pp. 379-80.

same general area, title to some twenty-five islands has been in dispute between the United States and Great Britain.²⁸ Westwards lie the six hundred odd strategic islands of the Carolines, Marshalls, Palaus, and Marianas. First they were German territory, then from 1920 a Japanese mandate used as fixed aircraft carriers and naval bases. Finally, from July 18, 1947, all the islands became a strategic-area trusteeship held by the United States. Linked strategically with them were the score or more American bases obtained at the same time in the Philippines.²⁹ This Pacific Islands trusteeship, the first of the strategic-area type under the Charter, demonstrated in the most spectacular way the abandonment of neutralization and demilitarization as a characteristic of international trusteeship. It marked the advancing of the American strategic frontier thousands of miles across the Pacific.

In East Asia there was also a projected four-power trusteeship for Korea, which as these words were written had not gone beyond an indefinite two-power occupation, with the Russian and the American zones divided by an iron curtain. This proposed trusteeship was not the first suggestion of its kind in East Asia. For there was a hint at the Paris Peace Conference in 1919 of a similar possibility for the former German territory of Kiaochow in the Shantung peninsula.³⁰ Whether in the final peacemaking with Japan international trusteeship will make any further headway in the former Japanese possessions outside the four main islands of Japan is still wholly obscure. It was not made a condition of the handing over of the Kuriles to the USSR.^{30a} Japan itself is now demilitarized and placed under a form of international tutelage of indefinite duration, controlled mainly by the armed forces and administrative services of the United States. Manchuria reveals its frontier character by endemic warfare masked by international formulae.

* * *

The possibility of making peace settlements in the Far Eastern Zone of the international frontier is dependent on what happens in the European and African zones—and vice versa. Deadlock at one point is likely to mean deadlock at some or all the others. Instability—if not the present degree of

²⁸ A map showing United States claims to eighteen British and seven New Zealand islands was published in *Newsweek*, New York, on March 18, 1946.

²⁹ Under the 99-year agreement of March 14, 1947, between the United States and the Philippines. The bases may be made available to the Security Council of the United Nations by agreement of the parties.

³⁰ *For. Rels. of U. S., Paris Peace Conference 1919*, Vol. V, pp. 109, 127-28, 245.

^{30a} Under the Yalta Agreements of February 11, 1945. These also provided for the joint operation of the Chinese Eastern Railway and the South Manchurian Railway by a joint Soviet-Chinese Company—a sort of economic condominium. It was further agreed that: "the commercial port of Dairen shall be internationalized, the pre-eminent interests of the Soviet Union in this port being safeguarded, and the lease of Port Arthur as a naval base of the USSR restored" (UK Miscellaneous No. 6, 1947).

deadlock and basic antagonism between the powers—has always been a characteristic of the international frontier. The frontier is formed by the policies of a few Great Powers and their relations to each other, as well as to smaller powers that lie between them or on their lines of communications. So that friction or an adjustment at one point is likely to affect relations and the balance of power at others. A settlement or adjustment at one point by one of the characteristic forms of compromise indicated above is thus rarely an isolated event. Thus the Saar regime and the mandates of 1919–1923 were part of a far wider series of territorial settlements. A more striking example is the Anglo-French condominium of the New Hebrides in 1906. This was merely a final link in a long chain of Anglo-French adjustments beginning in 1896 and leading up to the Entente of 1904. These included settlements in Newfoundland, Morocco, Egypt, the Nile Valley, and the Burma Indo-China Frontier. Twice the conflicts had led to the brink of war—in relation to Siam in 1893 and at Fashoda on the Nile in 1898. Thus it has to be remembered that compromise solutions of the kind examined here are only part of a wider picture. Territorial rivalries may be left unsettled, or may end in war or in annexation by one party or the other, or in the recognition of the sovereign independence of the disputed territory, or in its designation as a puppet state independent only in name.

5. The United Nations and the International Frontier

Though League mandates were historically phenomena of the international frontier, the League of Nations managed to some extent to keep them out of the forefront of world politics. Individual Great Powers like Germany and Japan used mandates as a stalking horse for war. Germany, profiting by the element of uncertainty in mandate status, kept alive the idea of the return of the German colonies and secretly organized the German settlers in Tanganyika and South-West Africa as Nazi cells to take over when war came. But neither Germany nor Japan nor other powers were able to make much direct use of the Mandates Commission for political purposes. This was due in part to the non-governmental and expert character of the Commission, and the sedulous avoidance of politics by the Secretariat. The League tried consistently, and on the whole successfully, to keep the emphasis on welfare and the interests of the native inhabitants.

The United Nations began its life dominated and divided by the international frontier as the League had become only in its last years. Its trusteeship system was a new model introducing several important changes which bring the trusteeship system more into the main stream of world politics than was the case with the mandates. Thus the conception of the mandate as a neutralized or demilitarized area was dropped for all trusteeships, and above all for the "strategic area" form. In place of a technical

sovereignty. It is an area of low political pressure into which the forces of the strong, well-organized states tend to expand and where their spheres of influence may overlap and clash.³ To it belong weak ungrouped and unprotected states, or states which temporarily, through civil war or other factors, have lost their power and cohesion, and thus lie open to pressures and invading forces. But in general it is the area of more or less dependent peoples as distinguished from independent peoples. For the mark of an independent people is that it has a stable internal peace and can offer sufficient opposition to such intrusions to make them difficult if not impossible.

Nearly all mandates and trusteeship areas are to be found in a few great frontier zones of overlapping interests or spheres of influence of the powers not contiguous with their national frontiers. But they may also arise at points of direct frontier contact between the Great Powers, as in the Saar Basin. In such cases a clash of sovereignties may be mitigated by some compromise form of international regime such as the Free Territory of Trieste, set up under the peace treaty with Italy of February 10, 1947.

There are no mandates, no trusteeships, no dependent peoples within the well-ordered peace area of a strong, advanced national state, such as metropolitan France or Great Britain. But within a number of the states members of the United Nations, including more than one of the five Great Powers permanent members of the Security Council, there are internal dependent areas and depressed peoples. Though these peoples are depressed, in need of tutelage and assistance and of effective guarantees of their human rights, they are not made the subject of annual reports and petitions to any international body. Their populations are without any special international safeguards (though they do come within the general field of "human rights" of the Charter).⁴ For much the same reason no example of international trusteeship, and few if any of the other phenomena of the international frontier, are to be found in the Western Hemisphere, in which there is a single Great Power—the United States of America.⁵ The international frontier threatened to run through the

³ Thus the Near and Middle East was characterized by President Truman as "An area of great economic and strategic importance, the nations of which are not strong enough individually or collectively to withstand powerful aggression. It is easy to see, therefore, how [it] might become an arena of intense rivalry between outside powers. . . ." Army Day address, April 6, 1946. Cited in State Department Bulletin, Jan. 26, 1947, p. 145.

⁴ Without specific provisions for petitions in the Charter the "right" of petition has been assumed and petitions are being addressed to the Commission on Human Rights as well as to the Commission on the Status of Women.

⁵ To meet the danger of European colonies in the Western Hemisphere becoming derelict through German conquests in Europe, the Act of Habana of July, 1940, provided for their administration under a form of trusteeship by one or more American States.

The negotiations for the purchase of the Virgin Islands (from 1867 onwards) were dominated by their "naval importance." "The Caribbean," Mr. Lansing wrote in

Americas; the series of episodes whereby it was eliminated from the Western Hemisphere forms the central thread of the history of American diplomacy.

Some of the phenomena that occur in trusteeship areas are not, of course, peculiar to those areas. Thus, states defeated in war may have imposed upon them by the victorious powers, under a treaty of peace, some of the restraints or safeguards which are characteristic of a trusteeship area. Common examples are special provision for the protection of minorities, under international guarantee, and the open door. From minorities protected in this way petitions may come to an international body in much the same manner as petitions come from a mandated or trusteeship area. Also, in the case of newly created states, similar conditions may be imposed by the powers before they are prepared to grant recognition. Thus the minority treaties of 1919 to 1923 applied to all the succession states created out of the ruins of the Austro-Hungarian Empire. Similar minority safeguards had been imposed on the states that emerged one by one for more than a century out of the ruins of the Turkish Empire. Likewise, as a result of the same historical forces, minority protection became a feature of the mandates set up for the former Turkish areas after the first World War, and is continued in the United Nations plan for partition of Palestine.

Moreover, even a great state which has fallen into a condition of prolonged internal weakness and civil war, and so become incapable of excluding, controlling, or protecting the foreign trader or traveler, may be subjected to a species of limited international tutelage. Thus, China, in the nineteenth century became a semicolonial area open to intrusions from her land and sea borders, and was subjected to the "unequal treaties." These limited her tariff autonomy, made her customs revenue security for foreign loans, imposed a one-way open door, and gave foreign states jurisdiction over their own subjects in Chinese territory, with the right to establish extraterritorial zones in Chinese ports. China had temporarily lost her full sovereignty and was partly merged in the international frontier. Only in recent times have the western powers enabled her to close her sea borders by giving up their special privileges.

Phenomena such as those mentioned in the last two paragraphs are not commonly associated with international mandates and trusteeship; but they are due to the same political causes and have elements in common with mandates and trusteeship. They all involve some kind of tutelage; they are all the result of the intrusion of outside forces, whether those of a single state or of several states, or of an international body. Greece in 1947 afforded an example of tutelage, a special form of protectorate with trusteeship features, falling short of full international trusteeship. The

1917 to President Wilson in giving the reasons for the transfer, "is within the peculiar sphere of influence of the United States." *Foreign Relations U. S., Lansing Papers 1914-20*, Vol. II, pp. 466-470. *For. Rel. U. S. 1917*, pp. 693-694.

United States intervened in 1947 at the request of the Greek Government to give aid and protection, training and supervision, thus supplementing the aid given hitherto by Great Britain. The action was taken in conformity with the Charter. It was formally notified to the United Nations, to which some kind of accounting was to be made. The possibility was held open that the United Nations itself might take over ultimately the responsibility if it desired and were able to do so. And a United Nations frontier commission was proposed and finally appointed by the General Assembly as an insurance against violations of the Greek frontier. This was tutelage with some international elements but not full international trusteeship in the technical sense of the Charter. There were close parallels with the Korean situation where a four power trusteeship under the United Nations had been proposed by the Great Powers as a solution.

Thus the varieties of the species shade off into one another. Spheres of interest and national trusteeship shade off into protectorates; or into various forms of condominiums. These shade off into other forms of international regimes like Danzig or Tangier; and these in turn shade off into mandates, direct League trusteeship as in the Saar, and the several kinds of United Nations trusteeships. For the United Nations Charter itself recognized at least four distinct varieties of trusteeship: the strategic-area type; trusteeships exercised by one state; or by several states; or by "the Organization itself." Thus the condominium, or rule of several states (rejected by the Paris Peace Conference in 1919 as unworkable⁶), crept by a back door into the Charter. This was logical enough because the condominium was a well-known alternative form of administration on the frontier when nothing better could be agreed on by the powers concerned. Under the League of Nations a single territory could pass through several phases. The Sanjak of Alexandretta, formerly part of Turkey, was first part of the mandate for Syria; then, in 1937, it was turned into a joint international regime under the League, with France and Turkey acting as League agents; and finally, in 1939, it was reabsorbed into the Turkish state.⁷

What matters is the substance and not the form. The Saar Territory was under the Saar Governing Commission and not the Permanent Man-

⁶ "Everybody quarrels, and nothing is done" (Balfour) was the general verdict at the Paris Peace Conference. *For. Rel. Paris Peace Conference 1919*, Vol. V, pp. 614, 670-672. Cf. G. L. Beer's verdict on "international protectorates" and "administrative internationalism" in his *African Questions at the Paris Peace Conference*, pp. 421-24.

⁷ The international regime devised for the Sanjak by the League Council (see Official Journal of the League of Nations, February, 1937, p. 119) bore some resemblance to the Statute of the Free Territory of Trieste. The League Council was to exercise League supervision. But France and Turkey were to execute the Council's decisions; they guaranteed the territorial integrity of the area which was to be demilitarized. The whole development was dominated by fear of the oncoming war in Europe. See A. H. Hourani, *Syria and Lebanon*, Oxford Univ. Press, 1946, pp. 360-69.

dates Commission. Trieste is under the United Nations Security Council. And the United States' Pacific Islands "strategic area" trusteeship is under the Security Council assisted by the Trusteeship Council. But such differences are largely matters of the internal economy of the League or of the United Nations—which committee, which section of the Secretariat, has to handle the petitions, the reports, the recommendations coming in a steady stream from such territories to the League Council or to the bodies that inherited its functions, the Security Council, the Trusteeship Council, and the General Assembly of the United Nations.

Nothing, it will be noted, has been said so far of the African mandates south of the Sahara. The reason is that historically international mandates and trusteeship did not originate mainly in Africa. Their significance cannot be understood if they are studied mainly in relationship to Africa. The theory and ethics of national trusteeship developed first in relation to the vast dependency of India. International mandates of a primitive kind developed first in relation to the Mediterranean-North African-Middle East frontier zone, especially in the eastern Mediterranean and the Turkish Empire from Egypt to the Balkans. Mandates in tropical Africa were a secondary phenomenon. The idea that both historically and as a contemporary phenomenon mandates and trusteeship involve primarily Africa south of the Sahara and the Pacific Islands is a misreading of the facts. Yet the idea has gained considerable currency. Thus in a recent publication of high authority, the history of mandates becomes almost wholly an African affair; it is told in terms of the humanitarian movement, the abolition of slavery, the development of national trusteeship, colonial self-government, equality of commercial access, the Berlin-African Conference of 1884-85, and, finally, the setting-up of the League African mandates in 1919.

All this is no doubt important but it is less than half the story. By leaving out all reference to the political background of the mandate and trusteeship systems it obscures the relationship of mandates to other varieties of the species. It fails to explain why the League mandate system was applied only to ex-enemy territory and nowhere else. It minimizes the great importance historically of the Near East mandates. It gives the wholly misleading impression that historically the "A" mandates, set up in the areas liberated by the collapse of the Turkish Empire, were special cases, outliers as it were of the central range in Africa; whereas they are in fact the main range itself, and the African mandates are the lesser ridges branching off from it. They were a further stage of the partition of Africa under a more elaborate formula. The partition of Africa, the greatest example of peaceful adjustment in the history of the international frontier, combined national trusteeship with international obligations under the Congo Basin Treaties. The mandates added the principle of international accountancy. The partition was accomplished by the con-

cert of Europe without war, though not without friction between the powers. It was friction between France and Germany that permitted King Leopold of Belgium to slip in between them and to secure from the powers the mandate to undertake the government of the area that became known as the Congo Free State (later the Belgian Congo) in 1885.⁸

3. *The Unity of the Problem of Peacemaking After the World Wars*

This preoccupation with the African origin of mandates and international trusteeship can be traced back to a misunderstanding of what really happened at the Paris Peace Conference. General Smuts, who was widely credited with originating the idea of the League mandate system, has in a curious way been regarded as misapplying it. He suggested that it should be confined to Europe and the Middle East and not extended to Africa and the Pacific; President Wilson, however, insisted on dropping it for Europe but extending it to ex-enemy territories in Africa and the Pacific. This is an over-simplified and very misleading interpretation of what happened. The full records of the Peace Conference are now available. The perspective of the Second World War and two Leagues of Nations have been necessary to make clear the real significance and far-sightedness of General Smuts' proposals.

The reason General Smuts gave for limiting mandates to Europe and the Middle East was that he took mandates to mean self-determination. "The German colonies in the Pacific and Africa," he wrote, "are inhabited by barbarians, who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any ideas of political self-determination in the European sense."⁹ These colonies should therefore, he thought, be disposed of on the basis of President Wilson's Fifth Point, which seemed clearly to envisage annexation and national trusteeship rather than an international mandate. As this passage indicated, General Smuts was thinking of mandates as a temporary system, a stepping-stone toward self-government and self-determination. It was, he said, "a temporary expedient." It was temporary in two senses. In the first place, the communities under tutelage were to become independent states. In the second place, the appointment of "suitable Powers . . . to act as mandataries of the League in the more backward peoples and areas" was a compromise. The compromise was necessary "partly to conciliate the Great Powers and partly in view of the administrative inexperience of the League at the beginning."

⁸ S. E. Crowe, *The Berlin West African Conference 1884-85*, London, 1942, pp. 145 f. Temperley, *History of the Peace Conference of Paris*, Vol. VI, p. 502, refers to the Congo as the first mandate.

⁹ *The League of Nations; A Practical Suggestion*, by Lt. General the Right Honorable J. C. Smuts (London: Hodder and Stoughton, 1918). The citations in the following paragraphs are from this publication.

It was a far-reaching and statesmanlike view of the necessities imposed by the breakdown of the empires—Russia, Turkey, Austria-Hungary, and Germany—which General Smuts presented to the Peace Conference. These empires had been based on the inequality and bondage of their peoples. The chaos resulting from the collapse of the empires could be overcome only by a reconstruction based on the solid principle of nationality and self-determination rather than of subjection. He saw the League of Nations as the “successor of the Empires,” the “liquidator or trustee of the bankrupt estate” of the Old World. He saw annexation replaced by what he called reversion to the League. Some states, he recognized, were sufficiently advanced and unified to become independent at once—Finland, Poland, Czechoslovakia, Yugoslavia. Others would have to pass through a period of temporary tutelage. They were hardly yet capable of statehood but would “require the guiding hand of some external authority to steady their administration.” They would be self-governing but with “external assistance and control.” Examples which he placed in this category were Transcaucasia, Mesopotamia, Lebanon, and Syria. (He used for this category the word “autonomies”; “protectorate” might also have served.) In other territories, such as Palestine and Armenia, the peoples were so racially divided that “the administration would have to be undertaken to a very large extent by some external authority.” The external authority would in form be that of the League of Nations. But the League (at least until it was more consolidated and experienced) would have to act, he thought, through a national mandatory; since direct international territorial administration had been shown by past experience to be “paralysis tempered by intrigue.”

The importance of this view was that it summed up in a single sweeping generalization all the different expedients, including mandates necessitated by the downfall of the empires. New states shaded off by degrees of autonomy into protectorates and mandates. Minorities and mandates were seen as related aspects of a common problem. Demilitarization was needed for new states as well as mandates. This sense of the unity of the problem comes out strikingly in the picture General Smuts drew of new sovereign states and beside them—

a large number of autonomous States . . . befriended, advised, and assisted in varying degree by individual great States. A smaller number of areas will be directly administered by some or other of the Powers. Over all would be the League as a real live controlling authority, seeing that its mandates or charters are fairly carried out, that there is no oppression of small racial minorities in the larger autonomies or administrations, and that the guarantee of the open economic door and of a peaceful policy in all less developed areas gives no reason for bitterness or rivalry among the great States.¹⁰

¹⁰ Same, pp. 28–29.

Succession states, he thought, should be treated in the same way as mandated areas in the matter of demilitarization. The new states should possess no military forces beyond those necessary for the purpose of internal police. "In respect of all such territories the League must be responsible, directly or through the mandatory, for the maintenance of external peace." He saw that the new nation states arising in the decayed empires (whether with or without a temporary stage of tutelage) were not likely to keep the peace with each other without external restraints. "But for the active control of the League," he pointed out, "the danger of future wars will be actually greater, because of the multitudinous discordant States now arisen or arising." The historic situation of national rivalries among the Balkan states would be extended. In the past the empires had kept the peace among their rival nationalities. Now this would be the task of the League. In many cases they were "animated by historic hostility to one another," ready "to fly at one another's throats on very slight provocation."

The views of General Smuts have been quoted at length because there are no pages in the history of mandates or trusteeship which show as these did the inner unity of all these related phenomena and the function of mandates and international trusteeship in the state system of the world.

The problems of peacemaking after the Second World War have the same essential unity as after the first. In both periods of resettlement there were territories to be placed under mandate or trusteeship; there were sovereign states, to be raised up again from the ruins of fallen empires—this time of Germany and Japan; there were what General Smuts referred to as "autonomies." These, as he put it in terms familiar enough today, were territories that could not be fully sovereign but had to be "befriended, advised and assisted in varying degree by individual great States." In both periods of resettlement, guarantees of the protection of racial minorities and "human rights" were required in the area of Central Europe and the Middle East. The human-rights clauses of the peace treaties in the second world settlement, and in all the trusteeship regimes set up under the United Nations, had their parallels in the minority treaties of 1919-23 and in the minority and other safeguard clauses in the League mandates.

4. The Phenomena of the International Frontier

Historically, mandates and international trusteeship are rooted in the decline and fall of empires, in the expansions of the powers into weak and backward areas, in their rivalries, in overlapping spheres of interest, and in the balance of power. Only one empire—the Empire of Spain—has fallen in modern times without producing any of the characteristic elements of international mandates or trusteeship. The reason was that

the Spanish colonies were geographically already within the sphere of influence of the United States, or were annexed by it.

International trusteeship is essentially a phenomenon of the international frontier. It is found mainly in certain great political frontier zones which historically have produced a series of related phenomena, such as spheres of interest tacitly or openly recognized by other powers; international territorial regimes of various kinds (including condominiums, mandates, and trusteeship areas); areas brought under national sovereignty but subjected by treaty to an open-door regime such as the territories in the Conventional Basin of the Congo; demilitarized areas; neutralized zones; buffer states; minority regimes; capitulations; leased areas; international settlements, etc.

All these related phenomena have occurred historically in several well-defined major frontier zones clearly visible on the map of the Eastern Hemisphere. The main axis runs from west to east through the Mediterranean and the Middle East to the Persian Gulf and Iran, and on to Afghanistan and the borders of China, including Tibet, Sinkiang and Manchuria.¹¹ North Africa is a principal part of this main axis, and provided in Morocco, Tunis, and Egypt some of the most dangerous diplomatic crises preceding the first World War. In a sense the whole of Africa forms an extension of the zone. Africa, the last great frontier region of the world, apart from the Antaretic, is Europe's southern frontier, into which it has expanded in the same way and at the same time as America and Russia expanded to the Pacific. The great central zone of international regulation known as the Conventional Basin of the Congo is a characteristic phenomenon of the international frontier. So are the African mandates and trust territories.

Across the main Mediterranean-Middle East axis runs another zone extending along the western side of the Turkish Empire from the Nile to Palestine, Syria, Anatolia, Constantinople and the Straits, and the Balkans. This frontier zone continues northward from the Black Sea to the Baltic through the wide, confused band of territory marking the eastern edges of Central Europe formed by the agelong advances and retreats of the Slav and the Teuton. Along the western edge of Central Europe from the Adriatic to the North Sea runs another historic frontier line between Slav and Latin, German and French. Another great frontier zone of overlapping spheres of influence between the powers lies in the Western Pacific and along the east coast of Asia; it is marked by the breaking out of condominiums, mandates, projected or abandoned trusteeship areas, and areas of disputed title, as well as by the penetrations of the powers into China.

¹¹ The Anglo-Russian convention of 1907, delimiting spheres of special interest in Persia while upholding its integrity and independence, was a triple agreement affecting Afghanistan and Tibet as well as Persia.

body of experts, not dependent on their governments, was substituted a Trusteeship Council representing governments.

But these were minor matters compared with the circumstances in which United Nations trusteeship began to take shape. Like the other aspects of the United Nations, it was threatened with a vertical cleavage along the line of the international frontier. In the first General Assembly trusteeship became largely a political issue fought out between two blocs. The Pacific islands and the African mandates were dragged from their quiet backwaters to become cockpits for conflicting ideologies and competing political and strategic interests. Whether international trusteeship would succeed in fulfilling the hope of the Charter by promoting the welfare of the inhabitants and the interdependence of peoples, or whether its historical rôle would be to provide a favorite battleground for the United Nations was a question to which, when this study was written, there could as yet be no answer. That the first sessions of the Trusteeship Council (held in 1947, with the seat of the USSR vacant) should have begun in the spirit of the Mandates Commission, with as yet little open sign of the intrusion into it of the politics of the international frontier, might mean much or little.

Since international trusteeship is a phenomenon of the international frontier, any extension of the areas under trusteeship means an enlargement of that frontier. The extensions contemplated by the Charter itself were mainly in the category of "ex-enemy territory" to which the Covenant had confined the mandate system. The collapse of two more empires, Italy and Japan, left still further "ex-enemy" territory, some of which, as an outcome of political battles as yet undecided, might still be placed under international trusteeship.

The possibility of even further extensions of trusteeship and of the international frontier was opened up by the provision of the Charter for "territories voluntarily placed under the system." "Voluntarily" in international politics could mean the opposite, *i.e.*, a result achieved against the desire of the state concerned as a result of international pressures brought to bear through the organs of the United Nations, or outside them.³¹ A state could hardly be expected to relinquish voluntarily a portion of its territory to international trusteeship unless it had reasonable assurances on three essential points: (1) that the interests of the people of the territory would be as well served under international as under national trusteeship; (2) that the security of the state itself would not be impaired; (3) that the United Nations was really in a position to under-

³¹ Since these words were written the Fourth Committee of the General Assembly has carried by 25 votes to 23, with 8 abstentions, a resolution expressing the hope that colonial powers would place under the international trusteeship system such of their territories as were not ready for self-government. The resolution was opposed by all the states (including the U. S. A.) which have supplied data on non-self-governing territories under Article 78 (e) and was defeated in the General Assembly.

take the responsibility, and that the arrangement would contribute towards the general peace.

As matters stood in 1947 assurances on such points could hardly be given. In theory temporary arrangements, surrounded by an element of legal and political uncertainty, administered in the name of a weak general international organization, mandates and trusteeships held open an invitation to the powers to jockey for position. In an individual case an international trusteeship might be a practical and desirable solution. But there was no basis in experience for any general theory that international trusteeship *per se* contributes necessarily to international stability.

The very mark and sign of the international frontier is an area open to the pressures and competition of the powers, in which no writ, either national or international, can run unchallenged. There could be no assurance that the United Nations, itself split by the international frontier, and without material power, could command that frontier. If the general international organization were to cease to depend on power borrowed on short-term loan; if it were to acquire a solid territorial basis, and large-scale and stable financial and material resources; if it were to secure its own armed forces on which it could instantly rely at all times—then, indeed, it might command the international frontier. But this was the outline of a world not yet born.³²

To assess the contributors to peace on the international frontier made by international compromise solutions, including mandates and trusteeship, condominiums, demilitarized areas, neutralized and buffer states, would involve a major historical study. The value of such expedients depends on the temper and policies of the great powers at particular points of time. Because edifices built on the international frontier and bridges built across it must share its instability, this does not mean they do not contribute to international peace.

Buffer states, preserved or created by the powers for reasons of security and to lessen conflict—like Poland, the Lowlands, Switzerland, Turkey, Afghanistan, or Siam—have played a useful rôle when all the great powers had a will to peace. But at other times they have tempted the aggressor.

Historians searching the vast unstable slope of world politics for the point at which the avalanche of 1914–18 really began to move have looked closely at the annexation of Bosnia and Herzegovina by Austria-Hungary in 1908. For this annexation removed a buffer arrangement, set up by international agreement, between Austria-Hungary and Russia. Yet the whole group of the Balkan buffer states were themselves a source of frequent international crises and war, so that “balkanization” has become a synonym for a condition dangerous to the general peace. The German states for cen-

³² The same considerations applied to proposals such as that advanced by the International Cooperative Alliance in June, 1947, for United Nations administration of the oil resources of the Middle East. *The New York Times*, June 27, 1947.

turies formed a vast buffer area in Central Europe and their consolidation by Bismarck into the German Reich enabled Germany to wage two wars of aggression and these were facilitated by the existence on her frontiers of weak buffer states.

Any extension of the international frontier through the creation of new trusteeship areas could only be a small detail on the vast canvas of the post-war world. For immense extensions of the international frontier seemed already to be taking place quite apart from the trusteeship system. The frontier was already greatly extended through the continued Allied occupation of Germany, Japan, Korea, and other areas in a sort of condominium unregulated by treaty. Moreover, much of southern and eastern Asia, including India and China, was in the political melting-pot. For generations the power and sovereignty of Great Britain and France had given much of this vast area security and had removed it from the international frontier. Now as a result of voluntary withdrawals, and of the internal pressure of revolutionary forces, the protecting walls of existing sovereignties were being broken down. Whether they could be replaced, and how soon or late, by strong indigenous local sovereignties, whether these could hold their own against foreign intrusion, resist manifold temptations to war with each other, and preserve themselves against civil war, was the unforeseeable sum of incalculable forces.

THE GENERAL ASSEMBLY AND THE PROGRESSIVE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW *

By YUEN-LI LIANG

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The work which has been undertaken by the United Nations with regard to the encouragement of the progressive development and codification of international law finds its express origin in the duty given to the General Assembly by Article 13, paragraph 1 (a) of the Charter of the United Nations. It is therein laid down that: "1. The General Assembly shall initiate studies and make recommendations for the purpose of: (a) promoting international coöperation in the political field and encouraging the progressive development of international law and its codification." At the Conference held at San Francisco, April 25 to June 25, 1945, at which the Charter of the United Nations was drawn up, the measures that should be taken for "revitalizing and strengthening" international law, shaken in the course of a quarter of a century by the upheaval of two World Wars, were considered by Committee II/2 of the Conference. ✓

Two proposals laying emphasis on the place and importance of the rule of law in international relations had been submitted by the Chinese delegation at the second phase of the Dumbarton Oaks Conversations and subsequently accepted with some modification by the three other participating States in the Conversations. One of these gave expression to the requirement that the settlement of disputes should be achieved with due regard for the principles of justice and international law. The other, relating to the contents of that law itself, suggested that:

The Assembly should be responsible for initiating studies and making recommendations with regard to the development and revision of the rules and principles of international law. ✓

Both of these proposals were put forward by the sponsoring governments at the San Francisco Conference in the form of joint amendments.¹ ✓

* This article incorporates part of an address given at the Regional Meeting of the American Society of International Law, New York, November 8, 1947. Any views expressed in this article are those of the writer and are not to be regarded as necessarily the same as those of the organization with which he is connected.

¹ UNCTIO Documents/(Eng.) G/1 (a), Vol. 3, p. 24. The first amendment was subsequently adopted at the San Francisco Conference as part of Article 1 of the United Nations Charter in the following language: "The Purposes of the United Nations are . . . to bring about by peaceful means, and *in conformity with the principles of justice and international law*, adjustment or settlement of international disputes or situations which might lead to a breach of the peace" (italics added). ✓

On the second of the amendments lengthy discussion took place in Committee II/2 of the Conference as to the scope of the task to be assigned to the General Assembly. The development, revision, and codification of international law had been proposed by a number of delegations.² Certain delegations expressed doubts at the Committee as to the desirability of codification. The task of the General Assembly with regard to the revision of international law was considered by the Committee, and opposition was voiced against giving the General Assembly the powers of an international legislature. It was, however, recognized that the task of the General Assembly should embrace more than a mere restatement of the existing rules of law.

At the tenth meeting of Committee II/2, three questions were formulated for the decision of the Committee:

1. Should the General Assembly be empowered to initiate studies and make recommendations for the codification of international law? This was affirmed by a vote of 24 to 8.

2. Should the General Assembly be empowered to initiate studies and make recommendations for promoting revision of the rules and principles of international law? This was also affirmed by a vote of 16 to 8.

3. Should the General Assembly be authorized to enact rules of international law which shall become binding upon Members after such rules shall have been approved by the Security Council? This was decisively rejected, receiving only one vote in its favor with 26 against.³ //

The matter was then referred to Sub-Committee B of Committee II/2. At the seventh meeting of the Sub-Committee, a sharp division of opinion emerged as to whether the phrase "development" included also the concept of "revision of the law." The Sub-Committee therefore offered to the Committee II/2 two alternative drafts on this matter, proposing that the General Assembly should be responsible for initiating studies and making recommendations for the purpose of promoting international coöperation in the political field, and:

A. also for the codification of international law, the encouragement of its development, and the promotion of its revision,

² For these amendments, see the *United Nations Conference on International Organization: Selected Documents* (1946), pp. 89-109; 128-129. The Egyptian Delegation submitted a memorandum which would have included the codification of international law as one of the purposes of the United Nations. This was not accepted and Committee II/2 took up the matter as one of the functions and powers of the General Assembly (text of Egyptian proposal in volume cited, p. 94).

³ UNCTAD Documents, Vol. 62, Verbatim Records of 10th Meeting.

See also UN Document A/122 (Memorandum prepared by the Secretariat), 17 October 1946, pp. 9-12. ✓

OR

B. also for the encouragement of the progressive development of international law and its codification.

The question came before Committee II/2 again at its twenty-first meeting. Those in favor of text A insisted that express mention should be made of "revision," in order to offset any implication of rigidity which might be inferred from the reference made to codification. Others shared the view which was voiced by the delegate of the United States, that the phrase "progressive development" implied "modifications as well as additions to the existing rules" and struck a "nice balance between stability and change."⁴

By a substantial majority this view prevailed, and the final text to the effect that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development and codification of international law, was incorporated in the Charter as Article 13, paragraph 1 (a). ✓

The Work of the Second Part of the First Session of the General Assembly

The implementation of Article 13, paragraph 1 (a) of the Charter by the General Assembly was taken up in the Second Part of the First Session on the proposal of the United States,⁵ and referred to the Sixth (Legal) Committee, which, at its twenty-first meeting, on 20 November 1946, referred the question for detailed examination to its Sub-Committee 1,⁶ whose report was in substance accepted by the Sixth Committee.⁷

The Sixth Committee recommended that a Committee be set up to study the methods which the General Assembly might adopt to implement its obligation in this matter, and to submit a considered and comprehensive report to the General Assembly before the adoption of any definite plan for the progressive development of international law and its eventual codification.⁸ ✓

⁴ Verbatim Minutes of the 21st Meeting of Committee II/2, UNCIO Documents, Vol. 63, cf. Verbatim Minutes of the 10th Meeting of Committee II/2, UNCIO Documents Vol. 62, and Summary Records of 21st Meeting of Committee II/2, UNCIO Documents 848 (Eng.) II/2/46, Vol. 9, p. 177, and of the 10th Meeting of Committee II/2, UNCIO Documents 507 (Eng.) II/2/22, Vol. 9, p. 69.

⁵ Letter dated 2 August 1946 requesting the inclusion in the Provisional Agenda for the Second Part of the First Session of the General Assembly of an item looking toward the carrying out of the provisions of Article 13, 1 (a) of the Charter, UN Document A/98.

⁶ UN Journal No. 39, Supplement No. 6, p. 50. The Sub-Committee was composed of the representatives of Belgium, Canada, China, Cuba, Czechoslovakia, Egypt, Norway, U.S.S.R., U.S.A., and United Kingdom, with Prof. Castberg (Norway) as Chairman, M. Kaeckenbeeck (Belgium) as Vice-Chairman and Mr. Hopkins (Canada) as Rapporteur.

⁷ A/C.6/114, Report of Sub-Committee 1. A/222, Report of the Sixth Committee.

⁸ A/222.

This Committee as constituted by Resolution 94 (I) of the General Assembly at its meeting on 11 December 1946 consisted of seventeen Members of the United Nations appointed by the General Assembly on the recommendation of the President.⁹ The Committee was thus a Committee of representatives of Governments.¹⁰ The Committee was directed to study the methods by which the General Assembly should encourage the progressive development of international law and its eventual codification; the methods of securing the coöperation of the several organs of the United Nations to this end; and the methods of enlisting the assistance of such national or international bodies as might aid it in attaining this objective; and to report to the General Assembly at its next regular session.¹¹ ✓

Between the adoption of the Resolution on 11 December 1946 by the General Assembly and the first meeting of the Committee set up thereunder, preliminary studies were undertaken by the Division of Development and Codification of International Law of the Secretariat, and memoranda on various aspects of the subject were prepared for the use of Committee.¹² ✓

The Committee held its first meeting at Lake Success on May 12, 1947,¹³

⁹ A/P.V./55, Verbatim Record of Fifty-fifth Plenary Meeting of the General Assembly; UN Journal No. 58, Supplement A. The Member States appointed were: Argentina, Australia, Brazil, China, Colombia, Egypt, France, India, Netherlands, Panama, Poland, Sweden, Union of Soviet Socialist Republics, United Kingdom, United States of America, Venezuela and Yugoslavia.

¹⁰ UN Document A/222, paragraph 7.

¹¹ *Resolutions adopted by the General Assembly during the Second Part of its First Session*, p. 187, Resolution 94 (I).

For comments, see Manley O. Hudson, "Encouragement of the Development of International Law by the United Nations," this JOURNAL, Vol. 41 (1947), p. 104; also Wellington Koo, Jr., "Some Aspects of the Work of the Legal Committee of the General Assembly during the Second Part of the First Session," this JOURNAL, Vol. 41 (1947), p. 638.

¹² UN Documents: (1) A/AC.10/5. Historical Survey of the Development of International Law and its Codification by International Conferences; (2) A/AC.10/6. Bibliography on the Codification of International Law; (3) A/AC.10/7, with Corrigenda 1 and 2. Memorandum on the Methods for Encouraging the Progressive Development of International Law and its Eventual Codification; (4) A/AC.10/8, with Corrigendum 1. The Codification of International Law in the Inter-American System; (5) A/AC.10/22 and Addenda 1-4. Methods for Enlisting the Coöperation of other Bodies, national and international, concerned with International Law; (6) A/AC.10/25. Note on the Private Codification of Public International Law. With the exception of (2) and (5), these memoranda were reprinted in this JOURNAL, Vol. 41 (1947), Supplement, pp. 29-147.

¹³ The representatives on the Committee were: Argentina, Enrique Ferrer Vleyra; Australia, W. A. Wynnes; Brazil, Gilberto Amado; China, Shu-hsi Hsu; Colombia, Antonio Rocha, replaced by Jesus Maria Yepes; Egypt, Wabid Rafaat, replaced by Osman Ebeid; France, Henri Donnedieu de Vabres; India, Dalip Singh; Netherlands, J. G. de Beus; Panama, Roberto de la Guardia; Poland, Konstanty Grzybowaki, replaced by Alexander Rudzinski and Alexander Bramson; Sweden, Erik Sjoborg; Soviet

and at its fifteenth meeting on May 29th concluded its consideration of the main item on its agenda, namely, the methods for encouraging the progressive development of international law and its codification to be recommended to the General Assembly. ✓

The Report of the Rapporteur, Professor J. L. Brierly (United Kingdom), was presented to the Committee at its twenty-third meeting on June 10, and adopted at its twenty-eighth meeting on Friday, June 13.¹⁴ ✓

*The Work of the Committee on the Progressive Development of
International Law and its Codification* ✓

The Committee had before it an essentially practical task. It was concerned with the study of the methods, including the machinery that might be set up for the carrying out of the task assigned to the General Assembly by the Charter. The chief problems which arose in the course of its discussions may be grouped under four main headings: (1) the distinction, if any, between progressive development and codification, and the methods appropriate to each; (2) whether such development and/or codification should take place through the means of international conventions, or through scientific restatements drawn up by independent legal experts; (3) what permanent machinery should be set up to assist the General Assembly in its task; and (4) what the relationship of that machinery should be both to the General Assembly itself and to other bodies. ✓

1. Distinction between "Progressive Development" and "Codification"

When the Charter provision was drafted at San Francisco in 1945, a distinction had apparently been made between "progressive development" and "codification." The suggestions made by the Secretariat in the memorandum on methods, presented to the Committee on Development and Codification in order to facilitate discussion,¹⁵ were accordingly grouped into two sections: (1) Methods for Encouraging the Progressive Develop-

Union, Vladimir Koretsky; United Kingdom, J. L. Brierly; United States, Philip C. Jessup; Venezuela, Carlos Eduardo Stolk; Yugoslavia, Milan Bartos. The Bureau of the Committee was as follows: Sir Dalip Singh, Chairman; Professor Koretsky and Dr. Rocha, Vice-Chairmen; Professor Brierly, Rapporteur; the present writer, Secretary.

¹⁴ UN Documents A/AC.10/51. Report of the Committee. Reprinted in this JOURNAL, Vol. 41 (1947), Supplement, p. 18. For comments on the Report, see the present writer, "International Law: First Phase of the Work to Fulfill the Charter," *American Bar Association Journal*, Vol. 33 (1947), p. 765; see also "U.N. Committee on the Progressive Development of International Law and its Codification: Report of the U. S. Representative," *Department of State Bulletin*, Vol. XVII, No. 420 (July 20, 1947), p. 121.

¹⁵ UN Document A/AC.10/7, reprinted in this JOURNAL, Vol. 41 (1947), Supplement, p. 111. The various suggestions are more fully developed in an article by the present writer in *The Yearbook of World Affairs 1948* (London), entitled "Methods for the Progressive Development of International Law and its Codification."

ment of International Law; and (2) Methods for Encouraging the Eventual Codification of International Law.

As to progressive development, the Secretariat memorandum divided the ground into: A. Methods for Encouraging International Legislation; and B. Methods for Encouraging the Development of Customary International Law; and C. Methods for Encouraging the Development of International Law through the Judicial Process. ✓

Encouragement of international legislation was considered as regards: 1. Extension of the area of matters covered by international legislation; 2. Compilation of legislative materials; 3. Improvement in techniques of multipartite instruments, especially as regards uniform treaty clauses, the encouragement of ratifications and accessions, and the encouragement of the use of organs of the United Nations in the conclusion of multipartite instruments. ✓

With regard to codification, particular reference was made to two different but complementary methods, (a) codification by convention and (b) scientific restatement of international law. The Secretariat memorandum was, by agreement of the Committee, used as a basis of discussion. ✓

At the opening of the discussions in the Committee, several delegates at once referred to the distinction made between progressive development and codification. Professor Jessup (USA) in a statement expressed the view that the task of the Committee embraced the dual function of planning for the ascertainment and reflection of the existing customary law and of devising the most appropriate procedures for the development of new law to meet the world's needs. "These two aspects of the task must always be kept distinct in our discussions because it is our mandate to study and report on methods and procedure and such methods and procedures vary according to whether one or the other aspect of our work is involved." ¹⁶ ✓

Professor Brierly (United Kingdom), referring both to the Secretariat memorandum and a memorandum which he had himself circulated, took a similar view. In the memorandum expounding his views, he pointed out that there were many other ways besides codification in which the General Assembly could encourage the development of the law. The distinction between development and codification may not be a strictly scientific one, but it is broadly true. Codification seeks to state rules as they already are, not rules acceptable to the parties to an agreement. Methods appropriate to the one task may not be equally so for the other. Failures in the past in the work of codification had been due to the use of an inappropriate method for that task. ✓ Codification should be a scientific task, but in attempting to codify law by conventions, the problem becomes predominantly political. ¹⁷ ✓ At a later meeting, Professor Brierly spoke in the same sense, emphasizing

¹⁶ UN Document A/AC.10/11; also contained in *Department of State Bulletin*, Vol. XVI, No. 412 (May 25, 1947), p. 1026.

¹⁷ A/AC.10/16 and A/AC.10/SR.2.

the practical importance of the distinction and indicating his view that development is not necessarily identical with legislation, and may take place in other ways. It was a much wider term.¹⁸

Professor Koretsky (Union of Soviet Socialist Republics) took a different view. He pointed out that Article 13, paragraph 1 (a) of the Charter referred to both "development" and "codification" together, and it was not necessary to make as wide a distinction between them as had been done by some of his colleagues. The Resolution of the General Assembly did not stress the difference between them, but simply indicated, by placing the word "eventual" before codification, the order in which the problems should be solved. Codification did not consist only in registering what exists, but more than that, it involved the noting of what had been done, the cleansing of errors from the existing law, and the laying down of new rules. The Committee should, therefore, differentiate between the development and the codification of international law, not in the light of two parts of its work, but of two stages in that work.¹⁹

Several other delegates, in the course of the discussion, emphasized that the distinction between codification and progressive development should not be too sharply drawn.²⁰

¹⁸ A/AC.10/30 (statement of the Rapporteur (Professor Brierly) in amplification of his memorandum) and A/AC.10/SR.6. Professor Brierly concludes his statement by giving two examples. He says, "It does not follow from the fact that codification necessarily involves a certain measure of developing the law by legislation, that therefore legislation and codification are merely two names for the same process. The difference may be one of degree only, but it is important all the same and it may well be, and I submit that it is in this case, that in codification, which is primarily, though not exclusively, concerned with stating the existing law, one method is the most useful and that in legislation, where the question of what is the existing law is unimportant and the aim is to create law in the future as it ought to be, another method of working is to be preferred. For example, suppose the problem that states have before them is a treaty about tariff reduction. If such a treaty is made, it will necessarily develop the law, but none, I think will suggest that it codified the law. Until the treaty is made, there is no law on the subject. On the other hand, suppose the matter for consideration is a convention on territorial waters. Here then is already a great deal of law but there are uncertainties and gaps in it. I think we should rightly describe that convention as a codifying convention, even though it would have to contain a certain element of new law, of legislation." A/AC.10/30, p. 3.

¹⁹ A/AC.10/SR.4, p. 4 and A/AC.10/SR.4/Add. 1.

²⁰ Thus, Dr. Amado (Brazil) recognized that the two tasks are distinct but complementary, and that there were organic relations between the two. A/AC.10/SR.4. He further said that the primary task of codification must not be confused with that of the development of the law, but neither must the two be separated entirely. A/AC.10/28. Dr. Hsu (China) said that progressive development and codification, though two distinct tasks, are closely related and have influence one upon the other and often overlap. A/AC.10/31. Professor Bartos (Yugoslavia), while recognizing the need for the distinction in theory between development and codification, felt that in practice it was hardly possible to make a separation between the two. A/AC.10/SR.5. The Delegation of Argentina in a memorandum (A/AC.10/10), while admitting that the problem of

The report finally adopted by the Committee records that on this matter "the Committee recognized that the tasks entrusted to the International Law Commission might vary in their nature. Some of the tasks might involve the drafting of a convention on a subject which has not yet been highly developed or formulated in the practice of states. Other tasks might, on the other hand, involve the more precise formulation and systematization of the laws in areas where there has been extensive state practice, precedent and doctrine. For convenience of reference, the Committee has referred to the first type of task as 'progressive development' and to the second type of task as 'codification.' The Committee recognizes that the terms employed are not mutually exclusive as, for example, in cases where the formulation and systematization of the existing law may lead to the conclusion that some new rule should be suggested for adoption by states."²¹

It should be noted that the Committee made the distinction between two types of task for convenience of reference only, and for the purpose of a division between the methods and procedure which it regarded as most appropriate to each of the two cases. It did not commit itself to any decision on the theoretical exactness of the distinction made. ✓

2. The Problem of Methods: Convention or Restatement ✓

The memorandum on Methods prepared by the Secretariat, in dealing with the subject of codification, had directed the attention of the Committee to two different methods of approach to the question—the method of international conventions, and the method of scientific restatements of law.²² The Committee examined these methods in the light of both branches of their task, i.e. "progressive development" and "codification." ✓

The suggestions contained in the memorandum of the Secretariat were prompted by the necessity emphasized in the report of the Sixth Committee of a "fresh approach to the problem" in view of the "difficulties encountered in past efforts to promote the progressive development of international law and its codification."²³ The attempt at codification of international law sponsored by the League of Nations had followed earlier lines in providing for the summoning of an international conference to draw up conventions on agreed topics of international law. The results of the Hague Codification Conference of 1930 had produced in the minds of certain states as well as many international lawyers²⁴ profound scepticism codification is to some extent included in the general question of the progressive development of international law, felt that for practical reasons it was advisable to draw a distinction.

²¹ Cited above, note 14, at p. 4, para. 7.

²² A/AC.10/7, cited above, note 15.

²³ A/222 (Report of the Sixth Committee).

²⁴ For instance, Sir Cecil Hurst, "A Plea for the Codification of International Law on New Lines," Paper read before the Grotius Society, October 16, 1946; Report of the

as to the future use of this method of approach. They felt that the disagreements at the Hague Conference seemed to shake the authority of certain accepted rules, without producing compensatory agreement as to the adoption of new rules. They did not feel that it was generally desirable to bring rules of law, concerning which conflicting interests or policies might emerge, into the atmosphere of political discussion engendered by an international conference. They did not consider such an atmosphere favorable to the formation of sound, just and stable rules, which would command for a long period of time the general approval of the community of states. They were willing to accept the view that ultimately in certain cases the rules of recognized law might be codified by international convention, but they felt that the main hope for the formulation and clarification of rules of international law lay in the method of scientific restatements, drawn up by impartial jurists, uninfluenced by political considerations. ↓

This view found expression in the proposal put forward by the British Government²⁵ for codification through unofficial restatements drawn up by a small commission of independent jurists, who are not representatives of governments. This was designed to exclude political factors and leave the task to jurists of recognized repute as a scientific task. Professor Brierly argued in the Committee that although for the extension of law into new fields it was necessary to rely on international conventions, the task of stating existing law was a scientific, not a political, task. To apply to this task the method of conventions was to bring in political factors which should be excluded therefrom. In this task it was therefore best to follow a method of scientific restatements carrying weight by their own merits only, until given more formal authority at some later stage.²⁶

On the other hand, a group of delegates in the Committee maintained strongly that the distinction made between the two tasks was not a practical one, and that for both of the tasks there was but one method which could yield satisfactory and enduring results—that method which had been followed in the past with varying success—the seeking of the express consent of the sovereign states, Members of the United Nations, to all changes in or restatement of existing law, by means of international conventions concluded at international conferences. The views expressed by the delegate of the Union of Soviet Socialist Republics and others formed part of a wider question which emerged on a number of specific points in the course of the discussions, and which took its legal starting point in the

Committee on the Development and Formulation of International Law (presided over by Sir Arnold D. McNair), The International Law Association, April, 1947. See also the present writer, "The Development and Codification of International Law under the United Nations," Paper read before the American Society of International Law, April 25, 1947, in *Proceedings of the Society*, 1947.

²⁵ UN Doc. A/AC.10/18.

²⁶ A/AC.10/18 and A/AC.10/SR.2.

sovereignty of each individual Member-State. The Governments of the Member States, it was urged, had the right to keep strict control over all projects for restatement of or amendment to international law. Members of all committees or commissions handling such questions should therefore be governmental representatives. Consultation with unofficial persons should be restricted. The method adopted should be that of international conventions signed and ratified by governments. ✓

Professor Koretsky (USSR) was strongly of this opinion. He considered that the convention method was just as appropriate for codification as for progressive development. In his view the United Nations was not a superstate legislature, and no laws could be made for states without their own consent. Scientific restatements might be admissible in themselves, but they would lead to no practical results, and since it was practical results that the world expected from organs of the United Nations, the mere publication of such restatements without further action would weaken popular belief in the value of its work. Legality demands precise legal forms, which in this case could only be attained through the signature and ratification of international conventions.²⁷ ✓

A Netherlands memorandum presented to the Committee compared the two methods. It considered that the results of codification by conventions had been on the whole disappointing. It pointed out that the disadvantage of the convention method lay in that, though a rule might be thought by most states to be binding customary law, there might be states who were reluctant for immediate political reasons to admit the existence of the rule. Hence the value of the rule might be weakened either by refusal of reluctant states to accept a convention, or by concessions made in that convention to the point of view of those states. Yet codification exclusively by experts would not be entirely satisfactory. Experts working without direct coöperation of governments might tend to depart from practical realities in the rules laid down. Nor was it certain in some cases that there would not merely be a substitution of indirect for direct governmental influences. Moreover, restatement by experts would be a static function, and might "freeze" international law in the shape in which it is at a given moment; and it could therefore only work satisfactorily for subjects in which the law itself is already more or less satisfactory or complete. Hence a method which combined the advantages of both restatement and convention was to be preferred.²⁸ ✓

In the course of further discussions in the Committee, Professor Brierly replied to the objections raised by Professor Koretsky. He argued that though, in the case of the development of international law (in the sense of its extension into new fields), the convention method might be preferable, since there was no super-state capable of enforcing its will on indi-

²⁷ A/AC.10/32; A/AC.10/SR.9.

²⁸ A/AC.10/18; see also A/AC.10/23 and A/AC.10/SR.4.

vidual states, yet in the case of the codification of rules already binding upon states, the individual desires of states were no longer of the first importance. For codification, therefore, he had recommended the method of restatement, as it had been proved by practice that it was difficult to make progress by means of conventions. He agreed however that conventions, if practicable, having binding force, were preferable to scientific restatements which had not such force *per se*. Scientific restatement could however prepare the way for codification, and he thought that a formula could be found that would satisfy both points of view, whereby both methods might be used according to circumstances—in certain cases, the convention method pure and simple; in others, the preparation of a preliminary restatement to be submitted to the vote of the General Assembly might be employed.²⁹ ✓

The Committee in its recommendations did not follow exactly the lines of the British proposals as to restatement, but in the procedures suggested in its report it made provision for the use of both methods.³⁰ The Report left no doubt that in the development of the law in the sense used in the Report, namely, the extension of the law into new fields, the concluding of multipartite conventions was the only possible method. In the field of codification, the Report recommended that the body to be established by the General Assembly and to be composed of experts might frame its conclusions in the form of draft articles of multipartite conventions. These draft articles would be given the widest publicity. After their submission to the General Assembly, the General Assembly would be free to take no further action in view of the fact that the recommendations had already been published or to adopt all or part of the recommendations by resolution.³¹ If the General Assembly would wish to go further, it might recom-

²⁹ A/AC.10/SR.10: Dr. de Beus (Netherlands), Professor Donnedieu de Vabres (France), Dr. Vileya (Argentina), Dr. Wynes (Australia) and Dr. Hsu (China) also thought that both methods might be useful, according to circumstances. Dr. Rudzinski (Poland), on the other hand, while appreciating the scientific value of restatements prepared by eminent lawyers, did not think that under the terms of the United Nations Charter such restatements could be given binding force, or even semi-official validity. Under the Charter, the General Assembly and other bodies of the Organization could do no more than recommend to Members to sign and ratify conventions. Professor Bartos (Yugoslavia) warned the Committee against any attempt to violate the Charter or to encourage its revision. He did not deny the value of scientific restatements but emphasized that Article 38 of the Statute of the International Court of Justice regarded teachings of publicists as no more than a subsidiary means for the determination of the rules of international law. Mr. Sjoborg (Sweden) also considered the convention method the only possible one. The advocates of the other method themselves admitted that the makers of scientific restatements would be obliged to fill in gaps in the law. This involved the creation of new rules, which was not possible without the explicit consent of States. For further views, see also A/AC.10/24, A/AC.10/SR.3.

³⁰ Report of the Committee, cited above, note 14.

³¹ Same, p. 10. The sub-paragraph to the effect that it might be recommended that "the General Assembly should adopt all or part of the report by resolution" was adopted by a majority of the Committee.

mend the draft to states for the conclusion of a convention or convoke a special conference for the purpose. This detailed procedure was intended to achieve the object of "preserving much of the scientific value of the restatement process,"³² though the very word "restatement" was not used in the Report. ✓

3. Establishment of Working Machinery. The International Law Commission (ILC) ✓

Following the lead given by the United States representative in his memorandum³³ of May 12, 1947, a consensus early emerged in the Committee that the best means of carrying out the task would be the establishment of a special committee or commission of a more or less permanent nature as a subsidiary organ of the General Assembly. ✓

The question whether the task of progressive development and the codification of the whole body of international law in all its branches could be undertaken by a single body was considered by the Committee. Proposals for the setting up of separate commissions for public and private international law, and also for international criminal law found advocates. After some discussion, it was, however, unanimously agreed to establish a single commission for all branches of the task, to be called the International Law Commission (ILC).³⁴

The Committee agreed that effect could best be given to the provisions of Article 13, paragraph 1 (a) of the Charter by the establishment of a Commission composed of persons of recognized competence in international law. ✓

(A) Membership

Discussion in the Committee turned on the proposals for the establishment of a new body to promote this work. A number of outline plans³⁵ were presented to the Committee, from which two distinct points of view became apparent. (A number of representatives felt that the body which would be efficient for undertaking the work would be a purely scientific

³² *Report of the U. S. Representative*, cited above, note 14, at p. 124.

³³ A/AC.10/14 (also published in *Department of State Bulletin*, Vol. XVI, No. 412 (May 25, 1947), p. 1029).

³⁴ A/AC.10/SB.7, p. 2; A/AC.10/SR.15, p. 14. The Committee added to this recommendation a note that the ILC should not in its view do anything which might detract from the valuable work already being done in the field of the development and codification of private international law by the Hague Conferences on Private International Law, and that when dealing with questions within that field the ILC might therefore consider the appropriateness of consultation with the Netherlands Government. A/AC.10/51, p. 1.

³⁵ A/AC.10/14. Suggestion by the United States; A/AC.10/16, Memorandum by the Representative of the United Kingdom; A/AC.10/18, Suggestions by the Netherlands Representative; A/AC.10/20, Proposals by the Representative of Poland.

one composed of jurists of the highest standing and widest international repute, wholly divorced from political considerations and not subject to the instructions of governments.

To this view, strong exception was taken by other representatives who thought that the task of development and codification of international law was a matter which essentially concerned the governments. The acceptance of legal rules binding the whole international community was an important matter, and the principle of the sovereign equality of all Member States, laid down as one of the basic principles of the United Nations in Article 2 of the Charter, might be endangered if the work was to be given not to the representatives of the governments whose consent would be required for the effective acceptance and operation of the rules laid down, but to independent jurists studying the legal problems in a detached and objective way. ✓

(B) Method of Election ✓

The proposal originally put forward by the United States was for a commission consisting of persons of outstanding competence in international law elected by the General Assembly and the Security Council through a procedure comparable to that for the election of judges of the International Court of Justice.⁸⁶ The proposal, therefore, envisaged a relatively small body of distinguished international lawyers, whose standing and method of appointment would give them considerable freedom and independence in their work, though the results of their work would be subject to the control of the General Assembly. Contact with the views of governments was to be preserved both in the suggestion that the present Committee or a similar Committee of government representatives might be continued as a general programming and policy group to assist the future body of jurists and also in a provision for the submission of drafts to governments for comments and suggestions before transmission to the General Assembly for approval. ✓

The United Kingdom went further in this direction in proposing a small committee whose nomination was to be free from "the risk of political appointments."⁸⁷ It should be observed, however, that the suggestion dealt with a codification commission in the strictest sense, a body entrusted with a task limited to the ascertainment of existing law and its restatement, ✓ and it contemplated primarily that the proposed body should draw up and publish unofficial restatements binding on no one *per se*, but which might acquire universal acceptance through their own merits, or might later be embodied in international conventions. The United Kingdom was not proposing a body which would be given the task of considering projects or draft conventions for "international legislation."

⁸⁶ A/AC.10/14, pp. 1-2.

⁸⁷ A/AC.10/16, p. 3.

The Polish proposal suggested a standing commission of experts consisting of at least eleven persons. These experts should be elected by the General Assembly which would choose eleven from a list of twenty-two, drawn up by the President of the International Court of Justice, from a panel consisting of the nominees of governments Members of the United Nations. Each government would have the right to nominate four persons, two only being its own nationals.³⁸

The Netherlands memorandum endeavored to reconcile divergent views by providing that the General Assembly might establish a fairly small codification committee consisting of international lawyers of the highest standing. This committee should select subjects for codification, study them, send out questionnaires to governments and other interested bodies whose coöperation might be helpful. In this way, the "restatements" ultimately formulated would be based on information derived mainly from official governmental sources, but in the first stages they would be drawn up by independent experts.

In the ensuing discussion, Dr. Amado (Brazil) preferred the United States plan to that of the United Kingdom. The work to be effective could not be merely academic. Consultation with, and coöperation of, governments was essential for the success of the work.³⁹

Professor Koretsky (USSR) was still more emphatic.⁴⁰ In his opinion, the present Committee composed of government representatives was fully equal to carrying out the work. The Committee was not charged solely with the study of methods but had been given a definite task. If a new body were to be set up, he doubted if the International Court of Justice would make any better choice of its members than the governments, and he disagreed strongly with the suggestion of the United Kingdom that the International Court of Justice should be requested to select the members of the proposed commission.

The Committee did not accept the view that the task of codifying international law could be best undertaken by a commission of Representatives of governments. Nor did it favor the creation of a body which might work in a wholly academic way. Two main methods of appointment were suggested and discussed. Some of those who emphasized the need for an independent and scientific body were disposed to favor the suggestion put forward by the United Kingdom that the judges of the International Court of Justice should be invited to make the appointments. A large majority of the Committee, however, preferred the plan proposed in a joint United States-Chinese memorandum,⁴¹ which was based, with slight modifications, on the method of election of judges of the International Court of Justice.

³⁸ A/AC.10/20.

³⁹ A/AC.10/SR.4.

⁴⁰ Same.

⁴¹ A/AC.10/33, p. 2.

This proposal, while accepting the principle of a commission which would be an independent body, not one of government representatives, accepted also the principle of nomination by governments. Recommendations on the basis of this text were finally included in the Report of the Committee.⁴²

The size of the proposed Commission also led to much discussion. Some delegations favored a small Commission of the highest quality. Others felt that representation of all the chief legal systems of the world was essential. In the light of the decisions of the Committee as to the scope of the work to be undertaken, fifteen members were recommended.⁴³

(C) Nature of Service

It was unanimously agreed that the members of the Commission should receive a salary proportionate to the dignity and importance of their office, and should hold office for three years.⁴⁴

Certain delegates considered that members of the Commission should not be required to give their full time service to the Commission. They argued that appointments would be accepted for part-time service by experts of the highest calibre, who might hesitate to give up their present employment for a three-year term of service on an International Law Commission. There was no such certainty in the case of full-time employment, which would, moreover, be much more costly to the United Nations. The Committee, however, held by a large majority that appointment of members who would give their undivided attention to the work of the Commission was to be preferred.⁴⁵ ✓

(D) Procedure

In the memorandum submitted jointly by the United States and Chinese representatives,⁴⁶ detailed procedures were carefully spelled out for the use of the ILC in its dual task of development and codification. Somewhat different procedures were envisaged for development and codification in recognition of the fact that "the tasks entrusted by the General Assembly to the ILC might vary in their nature."⁴⁷ ✓

Divergent views appeared in the Committee as to whether rapporteurs should be allowed in the Commission who were not themselves members of the Commission. Some delegations urged that the scope of the task, embracing private and public international law and also international penal law, might make an outside appointment desirable. Others felt that such a proposal would not follow the best constitutional practice, and that im-

⁴² A/AC.10/51, p. 2.

⁴³ A/AC.10/SR.23, pp. 10-14.

⁴⁴ A/AC.10/SR.11, p. 6; SR.24, p. 6.

⁴⁵ A/AC.10/SR.11, p. 6; SR.23, p. 17; SR.24, pp. 1-4.

⁴⁶ Cited above, note 41.

⁴⁷ A/AC.10/51, p. 4. See also A/AC.10/SR.12, p. 7.

portant officers such as rapporteurs should always be members of the Commission. In the case of progressive development of law, by a narrow majority, the permission to use outside rapporteurs was recommended. In the case of codification, however, the opposing view prevailed.⁴⁸

The proposed appointment of a sub-committee to work with the rapporteur on the preparation of interim drafts pending the receipt of replies to questionnaires sent to governments on projects dealing with cases of progressive development of law raised a similar problem to that of appointment of rapporteurs. Issue was joined on the question of whether this sub-committee must consist exclusively of members of the Commission itself, or whether outside experts could be called in to assist the work. By a majority, the Committee recommended that if necessary such outside help might be utilized.⁴⁹ ✓

Having decided that for the procedure of codification there should be no rapporteurs who were not members of the Commission, the Committee also deleted from its proposals the suggestion that the sub-committee working with the rapporteur for this purpose should include outside members.

The Committee decided to recommend that the Commission should be authorized to consult as desired with scientific institutions, and, by a majority, that it be authorized to consult, if necessary, with individual experts.⁵⁰ ✓

In the suggested procedure for codification, it was recommended that after the selection of the topics and appointment of rapporteurs, there should be the formulation by the ILC in conjunction with the Rapporteur of a plan of work and the circulation of a request to governments for the texts of pertinent laws and similar official documents to be submitted within a reasonable time. Considerable discussion took place in the Committee as to whether it was desirable to ask the governments at this stage in the procedure not merely for materials on which to base the work but also for comments on the proposed work itself.⁵¹

Different opinions were expressed as to at what stages of the codification procedure such comments should be requested. Professor Donnedieu

⁴⁸ A/AC.10/SR.12, p. 8; A/AC.10/SR.14, pp. 8-9; A/AC.10/SR.24, pp. 8-9; A/AC.10/SR.26, pp. 13-14; A/AC.10/51, pp. 4 and 8.

⁴⁹ A/AC.10/SR.13, pp. 2-3; A/AC.10/SR.24, pp. 10-11.

⁵⁰ A/AC.10/SR.13, p. 5; A/AC.10/SR.24, p. 12; A/AC.10/51, pp. 5 and 9.

Professor Koretsky disagreed with the principle of consultation with private experts. He was opposed to any influence of outsiders whose work would be beyond the control of public opinion. The scientific bodies which are subject to organized public opinion might be consulted, but individuals should not be so. Professor Donnedieu de Vabres and Professor Brierly did not agree with this standpoint. Professor Donnedieu de Vabres felt that flexibility was required. The Commission would have scientific work to do, and its members should not be regarded purely as government representatives. They should have the widest access to all possible material, including consultation with private experts.

⁵¹ A/AC.10/SR.14, p. 9; SR.15, and SR.27.

de Vabres (France) proposed that a request for comments of governments should be made immediately after the selection of topics and formulation of the plan of work. The representatives of USSR, Sweden, Yugoslavia and Poland considered consultation with governments essential also after the completion of the drafts. Professor Jessup, though not opposed to requests for comments at the earlier stage in principle, thought that governments might, if they wished, make comments at any time and it was unnecessary to ask for comments twice in the course of the procedure, particularly as the task of codification was primarily legal and scientific, and not political.⁵²

It was decided by a narrow majority that governmental comments should not be asked for at the earlier stage proposed, but only after the completion of the drafts.⁵³

Recommendations were also made by the Committee in its Report on special methods of encouraging the progressive development of international law⁵⁴ by improvements in the technique of multipartite instruments and uniformity of treaty clauses; the consideration by the ILC of the utility and importance of encouraging the ratification of and accession to multipartite conventions already concluded; the development of customary international law, and the development of the law through the judicial process; and the methods of securing the coöperation of the several organs of the United Nations and of enlisting the assistance of such national or international bodies as might aid in the attainment of the objective.⁵⁵

The Committee by a majority decided to refer specially to the necessity and importance of frequent consultation between the ILC and the organs of the Union of American States referred to in the Report as the Pan-American Union. The opponents of the recommendation, though paying tribute to the Pan-American System, did not think that it should be singled out for special mention, as such mention savored of inequality and the placing in a privileged position of certain states. The reference was however accepted by the Committee, a formal statement of the views of the minority being placed on record.⁵⁶

4. Relationship of the International Law Commission to other Bodies

During the discussion on the setting up of the new machinery, questions arose as to the relations both between the Commission and the General Assembly, and between the Commission and outside bodies.

⁵² The Netherlands, Colombian and Yugoslav representatives favored a request for government comments being made at the earlier stage. A/AC.10/SR.15 and SR.27.

⁵³ A/AC.10/SR.27, p. 8.

⁵⁴ A/AC.10/51 (Report of the Committee), p. 10. In this JOURNAL, Vol. 41 (1947), Supplement, p. 24.

⁵⁵ A/AC.10/51, pp. 11-12, Para. 19 (b) of the Report gave rise to disagreement, as it raised the question of the coöperation of other bodies in the work of the Commission. See below.

⁵⁶ A/AC.10/SR.18.

The powers of the ILC itself as regards the selection of topics for codification were considered by the Committee. Professor Koretsky (USSR) supported by the representatives of Poland and Yugoslavia, felt that the Commission itself should not be allowed any right of initiative in matters of codification. Only governments themselves should have a right of initiative in matters where systematization of custom and the practice of states involved.⁵⁷ Professor Jessup (USA) took a different view. He pointed out that in the case of the making of new law, government intervention was necessary, but for codification, which is merely the formulation of existing rules, such intervention was not required.⁵⁸ The Committee decided to recommend that the General Assembly should adopt a resolution instructing the ILC to survey the whole field of customary international law, together with any relevant treaties, with a view to selecting topics for codification, having in mind previous governmental and non-governmental projects.⁵⁹ ✓

A similar cleavage of view appeared when the question of the consideration by the Commission of projects and draft conventions emanating from any body other than the General Assembly itself was discussed in the Committee. It was contended by the representatives of the USSR and Yugoslavia that the General Assembly itself had the sole right of initiation in this matter. Professor Koretsky argued that Article 13, 1(a), of the Charter entrusts to the General Assembly alone the task of codification. The General Assembly should therefore both issue the instructions to the Commission and choose the topics to be considered by it. Drafts should not be submitted to the Commission by individual governments or by other organizations. Not only was there a practical danger of the swamping of the Commission with a flood of drafts, there was a legal objection—it was a violation of the Charter.⁶⁰ ✓

The Polish delegate pointed out that under Article 62 of the Charter the Economic and Social Council may make or initiate studies with respect to certain matters within its competence and may make recommendations with respect to such matters to the General Assembly, to Members of the United Nations, and to the specialized agencies concerned. He therefore felt that in matters within the scope of its functions under Article 62, the Economic and Social Council had concurrent powers of initiation with the General Assembly itself. On the general question he agreed with the views of the USSR and Yugoslavia as to the interpretation of Article 13, paragraph 1(a), of the Charter.⁶¹ ✓

These views were not however shared by a majority of the Committee. It was considered that though doubts might be raised as to expediency if

⁵⁷ A/AC.10/SR.14, p. 5.

⁵⁸ Same, pp. 5-6.

⁵⁹ A/AC.10/51, p. 7.

⁶⁰ A/AC.10/SR.13, pp. 13-14. Professor Bartos (Yugoslavia) expressed similar view with even greater emphasis: p. 15. See also A/AC.10/SR.25.

⁶¹ A/AC.10/SR.25, p. 7.

the powers of those bodies which might submit proposals to the ILC were not in some way defined, no question of legality or constitutionality was involved. Initiation of projects by the Commission itself not unnaturally commended itself to those who wished the work to proceed on scientific lines with as little political direction as possible. ✓

Professor Jessup (U.S.A.) pointed out that the Commission as proposed would be acting throughout subject to instructions from the General Assembly, and that only the General Assembly could ask the Commission to prepare new international legislative projects. But undoubtedly, the other bodies would have suggestions to put forward, and it was desirable that those ideas should be studied by the Commission who would report to the General Assembly concerning them.⁶²

Proposals containing the recommendation that the ILC should consider projects and draft conventions recommended by governments, other United Nations organs, Specialized Agencies, and those official bodies established by intergovernmental agreement to further the progressive development and codification of international law were accepted by a large majority.⁶³ ✓

It was agreed that the ILC should be authorized to consult, if need be, any of the organs of the United Nations on any draft or projects the subject-matter of which was relevant to the particular organ and it was recommended by a majority that in projects referred to the ILC by a competent organ of the United Nations, the ILC should be authorized, if it thinks it desirable, to make interim reports to the organ concerned prior to submitting its final report to the General Assembly.⁶⁴ ✓

The question of the right of the ILC to consult with organizations, other than the organs of the United Nations and the specialized agencies, was raised in connection with the study of the methods of enlisting the assistance of such national and international bodies as might aid in its work. A minority of the Committee thought that the list of organizations to be consulted should be limited. Professor Koretsky maintained that not even organs of the United Nations should be given the right to concern themselves with the task which belonged only to the General Assembly. On the other hand, Professor Jessup argued that while the right of initiating proposals to be submitted to the ILC should be limited to organs of the United Nations and to the specialized agencies, a broader view should be taken with regard to consultation.⁶⁵

The Committee by a majority recommended in its Report that the ILC should be authorized to consult any national or international organization, official or non-official, on any matter entrusted to it, if and when it believes that such a procedure might aid in the attainment of its objectives. It also

⁶² A/AC.10/SR.18, p. 14.

⁶³ A/AC.10/SR.25, pp. 5-8; Same, A/AC.10/51, pp. 5-6.

⁶⁴ A/AC.10/51, p. 11.

⁶⁵ A/AC.10/SR.17, p. 5.

recommended that for the distribution of documents of the ILC, the Secretary-General, after consultation with the ILC, should draw up a list of national and international organizations dealing with questions of international law.⁶⁶ ✓

The Second Session of the General Assembly

The Report of the Committee on the Progressive Development of International Law and its Codification was presented to the General Assembly at its ninety-first meeting on September 23, 1947, and was referred by it to the Sixth Committee.

After a general debate on September 25th and 26th, the Sixth Committee referred the Report to its Second Sub-Committee.⁶⁷

At its first meeting, the Sub-Committee unanimously agreed that an International Law Commission should be established, but being divided in opinion as to whether that Commission should be elected during the present Session, it decided to consult the full Committee by an interim report. The Sixth Committee, after discussion, on October 2nd decided that though the Statute of the ILC should be adopted during the second Session, the election of its members should be postponed until the next session.⁶⁸

After fifteen meetings, the Sub-Committee submitted proposals for the establishment of the International Law Commission and the draft Statute of that Commission to the Sixth Committee which approved the draft resolution and Statute.⁶⁹

On November 21, 1947, at its 123rd meeting, the resolution and the Statute were adopted by the General Assembly of the United Nations by 44 votes to none, with 6 abstentions.⁷⁰ The International Law Commission entrusted with the task of progressive development and codification of international law has thus been formally established. ✓

Concern had been expressed by a number of delegations at the delay which might be occasioned to the work by the failure to elect the members of the ILC during the Second Session of the General Assembly. The Sub-Committee therefore by a majority recommended that as an interim body to

⁶⁶ A/AC.10/51, p. 12. It was agreed that the Secretary-General in drawing up this list should take into account the resolutions of the General Assembly and of the Economic and Social Council concerning relations with Franco Spain and that the organizations which collaborated with the Nazis and Fascists should be excluded both from consultation and from the list.

⁶⁷ The Members of the Second Sub-Committee were as follows: Australia, Brazil, China, Colombia, Dominican Republic, France, Greece, Netherlands, Panama, Poland, Sweden, U.S.S.R., United Kingdom, United States, Yugoslavia. The Bureau of the Second Sub-Committee was composed of: Mr. Liu Chieh (China) Chairman; Professor J. P. A. François (Netherlands) Rapporteur.

⁶⁸ A/C.6/SB. 40, p. 5; A/C.6/198.

⁶⁹ A/504.

⁷⁰ A/P.V./123.

carry on the work pending the election at the Third Session, the former Committee which met in May and June, 1947, should be continued.⁷¹ The Sixth Committee however rejected the recommendation of the Sub-Committee⁷² and adopted instead a proposal submitted by the delegation of France,⁷³ to the effect that the Secretariat be entrusted with the preparatory work for the ILC. The Resolution as passed unanimously by the General Assembly on 21 November 1947 therefore instructs the Secretary-General to do the necessary preparatory work for the beginning of the activity of the ILC, particularly with regard to the questions referred to it by the Second Session of the General Assembly, such as the draft Declaration of the Rights and Duties of States.

The chief problems which arose in the Committee for the Progressive Development of International Law and its Codification were reviewed by the Second Sub-Committee of the Sixth Committee on the basis of the Report of the former Committee. The general pattern of the recommendations in this Report was preserved but some modifications were introduced. *J*

1. Distinction between "Progressive Development" and "Codification"

In the Sub-Committee to which the Report of the Committee on the Progressive Development of International Law and its Codification was referred, although some representatives considered that a distinction between progressive development of international law on the one hand and its codification on the other hand could not be maintained in theory, there was a general feeling that for the reasons given in the Report, where the distinction is made "for convenience of reference," the distinction as phrased in paragraph 7 of the Report could be accepted as a working formula.⁷⁴ And indeed the distinction is also made in the Statute of the International Law Commission as approved by the General Assembly (Article 15 and fol.).⁷⁵ *J*

2. Problem of Methods: Convention or Restatement *J*

The opposing views with regard to the question whether the method of international conventions should be used either exclusively, or whether, for the purposes of codification, i.e. for the formulation and systematization of existing law, the method of scientific restatement might be used also, were maintained throughout the discussions in the Sub-Committee,⁷⁶ and the minority view, according to which only the method of international conventions should be used over the whole field, found again expression in

⁷¹ A/C.6/194.

⁷² A/C.6/SR.59.

⁷³ A/C.6/196; A/C.6/SR.57, pp. 4-5.

⁷⁴ See the Sub-Committee's report to the Sixth Committee, A/C.6/193, pp. 9 and 12.

⁷⁵ A/504, p. 5.

⁷⁶ A/C.6/193, p. 9.

the meeting of the Sixth Committee in amendments proposed by the Soviet Delegation."⁷⁷ ✓

According to the majority view, the convention method only should be used for the progressive development of international law, but for codification other methods are allowable and, in the opinion of some delegations, even preferable.⁷⁸ Under Article 23 of the Statute the International Law Commission is authorized, after having prepared a draft under its procedure for codification (Article 18 and fol.), to recommend to the General Assembly either (a) to take no action, the ILC's report having already been published, or (b) to take note of or adopt the report by resolution, or (c) to recommend the draft to Members with a view to the conclusion of a convention or (d) to convoke a conference to conclude a convention."⁷⁹ ✓

The Report of the Committee on the Progressive Development of International Law and its Codification in paragraph 15 (b) recommended that one form of action which the General Assembly might take in the field of codification was that it "should adopt all or part of the ILC's report by resolution."⁸⁰ In the Sub-Committee, however, doubts were expressed with regard to the value of such adoption and some members even considered that this power of the General Assembly to adopt or reject ILC texts would introduce into the work of codification that very political element which it was hoped to remove. The Sub-Committee proposed to replace the term by the wording: "should take note of the report by resolution."⁸¹ In the Sixth Committee, however, the word "adopt" was reinstated and added to the Sub-Committee's text.⁸² ✓

It was generally understood that such an adoption does not give to a draft any legal binding force. It implies only that a majority of the

⁷⁷ A/C.6/199, Nos. 4 and 8.

⁷⁸ Mr. W. E. Beckett (United Kingdom) in the Sub-Committee drew attention to the Resolution adopted by the Institute of International Law at its meeting at Lausanne on 22 August 1947 (circulated as a document of the Sixth Committee at the request of the United Kingdom Delegation, A/C.6/152), in which it was stated: "The Institute, while not excluding the possibility of international conventions and declarations on subjects, in respect to which they might be considered practicable, feels that for the time being the valuable contribution to the work of codification would be a national and international inquiry on scientific lines for the purpose of determining the precise state of international law at the present day. The result of such inquiry would serve as a basis both for an attempt to establish the doctrine and for an official attempt, by the methods considered most appropriate, to fill the gaps in international law and obviate its imperfections." Attention was also drawn to the resolution adopted by the International Law Association at its 42nd Conference held at Prague in September, 1947 (circulated as a document of the Sixth Committee at the request of the Secretary-General of the International Law Association, A/C.6/154), in which "general approval" was given to the recommendations contained in the Report on the Development and Formulation of International Law, cited above, note 24.

⁷⁹ A/504, p. 7.

⁸⁰ A/331 (originally issued as A/AC.10/51 and cited above under this number).

⁸¹ A/C.6/198, pp. 14-15.

⁸² A/C.6/SR.58, pp. 5-7.

General Assembly has expressed its approval of the draft. Such a draft may therefore be considered adopted by the General Assembly, unless it wishes to go further by making a recommendation for the conclusion of a convention based upon such a draft. ✓

This point seems to be among the principal objections which prevented the Sixth Committee's report and draft resolution from gaining universal approval in the General Assembly, six countries having abstained from voting.⁸³ The arguments invoked for the objection were the same as those used in the meetings of the Committee on Progressive Development of International Law and its Codification. ✓

3. Organization of the International Law Commission (ILC)

As regards the organization of the ILC the Statute as adopted by the General Assembly varies in some respects from the recommendations in the Report of the Committee on Progressive Development of International Law and its Codification. As far as the ILC's composition is concerned, perhaps the most important deviation from these recommendations is that the members of the ILC shall not render full-time service, but shall meet in sessions. This was already a foregone conclusion when the Sixth Committee held a general debate on the Report, where many voices were heard in support of part-time service, not a single representative raising a plea for full-time service. It was generally felt that the whole set-up as envisaged in that Report was too elaborate and costly, whilst several delegations feared that such eminent lawyers as are required for the task of the ILC would not be willing to accept office if they would have to give up all their other activities.⁸⁴ The recommendation that the members of the ILC be elected by the General Assembly and the Security Council in accordance with procedure comparable to that laid down in the Statute of the International Court of Justice for the election of the judges was also modified in that election by the General Assembly only was substituted.⁸⁵ ✓

Whilst in aforesaid Report no recommendation was made with regard to the nationality of ILC members except that no two of them may be nationals of the same State,⁸⁶ the Sub-Committee by a majority decision proposed an additional requirement that only nationals of States Members of the United Nations would be eligible for election.⁸⁷ The view of the majority was that admission of nationals of non-Member States to a Commission whose task would consist primarily in the development and codification of international law among States Members of the United Nations

⁸³ *Journal of the General Assembly* No. 60, 21 November 1947, pp. 2-3; A/P.V.123, pp. 111-140.

⁸⁴ A/C.6/SR.37 and 38. See also report of the Sub-Committee, A/C.6/193, p. 2.

⁸⁵ A/C.6/193, p. 3.

⁸⁶ Reference was made to article 3 of the Statute of the International Court of Justice (UN Document A/331, p. 3, sub-paragraph (b)).

⁸⁷ A/C.6/193, p. 6 and p. 19, article 3, para. 2.

would complicate matters, and the fear was even expressed that such members might uphold ideas contrary to the Principles and Purposes of the United Nations. The minority considered that the General Assembly would take care that no undesirable persons were elected. However, the Sixth Committee, on a proposal of the United Kingdom, deleted the relevant provision from the draft Statute by a vote of nineteen in favor, fifteen against.⁸⁸ Consequently nationals of non-Member States may be elected. ✓

As to the election procedure a minor deviation from the Report is that the Member States may nominate as their candidates two of their own nationals and two nationals of other States (Article 4 of the Statute),⁸⁹ whereas the Report had proposed a maximum of eight nationals of other States (paragraph 5 (a)).⁹⁰ Also the recommendation to Governments to consult their highest courts of justice, legal faculties, etc. was not taken over in the Statute. ✓

With regard to the filling of casual vacancies, the Report's proposal that this might be done by the Security Council from a list of persons nominated by the ILC from the original panel of candidates⁹¹ was replaced by the simple rule that the ILC itself shall fill the vacancy having due regard to the requirements for membership as laid down in the Statute. As the Security Council was not to take part in the election of the ILC members, it follows that it would not be the proper organ for the filling of vacancies. It was finally decided that the ILC should itself fill such vacancies.⁹² ✓

With regard to the functions of the ILC the Report envisaged that the ILC would deal with public, private and penal international law, but it recommended that, in the field of private international law, the ILC should consider the appropriateness of consultation with the Netherlands Government so as not to detract from the valuable work done by the Hague Conference on Private International Law and to avoid duplication.⁹³ However, chiefly on account of the practical consideration that it would complicate the election of the ILC, if, as well as the representation of "the main forms of civilization and the principal legal systems of the world," an equal distribution of experts in public and in private international law should also be necessary, it was decided that the ILC should concern itself primarily with public international law, but was not precluded from entering the field of private international law.⁹⁴ ✓

⁸⁸ A/C.6/SR.58, p. 3.

⁸⁹ A/504, p. 3.

⁹⁰ A/331, p. 3, Sub-paragraph (a).

⁹¹ A/331, p. 3, Sub-paragraph (c).

⁹² See report of the Sub-Committee of the Sixth Committee (A/C.6/193, pp. 4-6) and Article 11 of the ILC's Statute (A/504, p. 4).

⁹³ A/331, p. 2.

⁹⁴ See the Sub-Committee's report to the Sixth Committee (A/C.6/193, pp. 17-18) and Article 1, paragraph 2 of the ILC's Statute (A/504, p. 3).

As to the procedure which the ILC will have to follow, although not rigidly,⁹⁵ in the carrying out of its functions, on the whole the recommendations of the Report were adopted. J

One of the major changes is that rapporteurs and members of sub-committees must be appointed from amongst the members of the ILC,⁹⁶ whilst the Report had recommended that in certain cases the ILC should be free to go outside its own membership.⁹⁷ On some points the Statute's provisions as to procedure are less detailed than the recommendations in the Report. Two of the recommendations were not taken over, viz. that the ILC should consider ways and means of bringing about improvements in the technique of multipartite conventions and of encouraging the ratification of and accession to multipartite conventions already concluded.⁹⁸ On the recommendation regarding uniform clauses of multipartite conventions, some delegates, while admitting that the ILC might not be the most suitable body to deal with the matter, drew attention to the need for this task being carried out in one way or another.⁹⁹ It was, however, provided that the ILC should consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning state practice and of the decisions of national and international courts on questions of international law.¹⁰⁰ ✓

4. Relationship of the ILC to other Bodies

The ILC being the body set up to assist the General Assembly in carrying out the task entrusted to it by Article 13, 1(a), of the Charter, it is obvious that it should in the first place occupy itself with the instructions given it by the General Assembly. Indeed, some delegations favored the idea that it should accept instructions from the General Assembly exclusively.¹⁰¹ The majority, however, considered that for the purpose of the development of international law the ILC should also consider proposals and drafts submitted by Member States, United Nations organs other than the General Assembly, specialized agencies and official bodies established by international agreement to encourage the progressive development of international law and its codification (Article 17 of the Statute).¹⁰² In such cases the ILC shall, if it deems it appropriate, make the preliminary study and report to the General Assembly, which may invite it to proceed with the work.

In the field of codification the ILC has been given the duty to survey

⁹⁵ A/C.6/193, p. 8.

⁹⁶ A/C.6/193, pp. 10-11.

⁹⁷ A/331, p. 5.

⁹⁸ A/331, pp. 10-11.

⁹⁹ A/C.6/193, p. 15.

¹⁰⁰ A/C.6/193, pp. 15-16.

¹⁰¹ A/C.6/193, p. 11.

¹⁰² A/504, p. 6.

the whole field of international law with a view to selecting topics for codification. Where it considers that codification of a topic is desirable, it is to submit its recommendations to the General Assembly (Article 18).¹⁰³

Consultation with other United Nations organs (Article 25), scientific institutions and individual experts (Article 16 (e) and Article 21), national or international organizations, official or non-official (Article 26), is widely allowed.¹⁰⁴ In this respect the original recommendations were adopted with only minor modifications. ✓

The Formulation of the Nuremberg Principles

The matter of the formulation of the Nuremberg principles was placed before the Sixth Committee of the General Assembly during the second part of its first session in the form of a draft resolution submitted by the delegation of the United States¹⁰⁵ and as part of the comprehensive task in the field of development and codification of international law. ✓

On the basis of the report of the Sixth Committee the General Assembly adopted on 11 December 1946 a resolution affirming said principles and directing the Committee on the Progressive Development of International Law and its Codification to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offenses against the peace and security of mankind, or of an international criminal code, or the principles recognized in the Charter and judgment of the Nuremberg Tribunal.¹⁰⁶ ✓

When the Committee took up the matter, opinions were divided as to whether under its terms of reference it was to study only methods or plans for the formulation of the principles in question or to undertake the consideration of substantive provisions. The latter point of view found its principal supporter in Professor Donnedieu de Vabres, the representative of France, who submitted a memorandum¹⁰⁷ in which he dwelt on the principles which could be found in the Nuremberg Charter and judgment: (1) the supremacy of international law over municipal law in the international penal sphere; (2) the applicability of international penal law to individuals and the jurisdiction of international criminal courts in respect of charges brought against individuals, without excluding penal responsibility of the criminal State; (3) no penal immunity based on the official position of the offender or on the orders he may have received from a superior; (4) the criminal nature of any war of aggression; (5) war crimes involving violations of the laws of warfare as embodied in the Hague Conventions. How-

¹⁰³ A/331, p. 8; A/C.6/193, pp. 12-13; A/504, p. 6.

¹⁰⁴ A/C.6/193, pp. 7-8, 11-12, 16-17; A/504, pp. 5, 7 and 8.

¹⁰⁵ A/C.6/69.

¹⁰⁶ *Resolutions adopted by the General Assembly during the Second Part of its First Session*, p. 188, Resolution 95 (I).

¹⁰⁷ A/AC.10/34.

ever, the majority of the Committee considered that its function was to deal with methods and not with the formulation of substantive rules.¹⁰⁸ J

With this restricted task the Committee continued the discussion on the basis of a proposal submitted by Professor Jessup.¹⁰⁹ In this proposal due account was taken of the fact that the General Assembly considered the formulation of the Nuremberg principles as of primary importance, but also that the task of preparing a general codification of offenses against the peace and security of mankind or an international criminal code, which the General Assembly resolution likewise envisages, would necessarily take considerable time. It therefore suggested that the future International Law Commission should prepare a draft convention containing the Nuremberg principles without awaiting the preparation of the codification of offenses against peace and security of mankind or that of an international criminal code, that the preparation of these codes could be begun at the same time but independently of the Nuremberg principles and that upon completion of said codes or either of them the question of including therein the provisions of the convention on the Nuremberg principles could be considered. J

In the course of the discussions,¹¹⁰ questions arose as to the interpretation of the term "international criminal code" as used in the General Assembly Resolution. In the opinion of Professor Koretsky, the General Assembly had not intended that an international criminal code should be prepared, but only that, if such a code were prepared, the place of the Nuremberg principles therein should be indicated.¹¹¹

Professor Donnedieu de Vabres pointed out that a complete international criminal code would include, but would not be confined to, offenses against the peace and security of mankind and the principles of Nuremberg. An international criminal code would be concerned with every crime in which there was an international element, but the offenses against the peace and security of mankind and the Nuremberg principles belonged to that type of criminal law which he designated as "*inter-étatique*."¹¹² J

The Committee finally recommended to the General Assembly that the ILC should be invited to prepare: (a) A draft convention incorporating the principles of international law recognized by the Charter of the Nuremberg Tribunal and by the judgment of that Tribunal, and (b) A detailed draft plan of general codification of offenses against the peace and security of mankind in such a manner that the plan should clearly indicate the place to be accorded to the principles mentioned in subparagraph (a). J

¹⁰⁸ A/AC.10/SR.18, p. 14.

¹⁰⁹ A/AC.10/36.

¹¹⁰ A/AC.10/SR.18.

¹¹¹ A/AC.10/SR.15, pp. 14-18; A/AC.10/SR.19, pp. 5-6.

¹¹² A/AC.10/SR.18, p. 15; A/AC.10/SR.19, pp. 2-3.

The Committee recorded as its opinion that this task would not preclude the ILC from drafting in due course a code of international penal law.¹¹³

The Committee also considered the question of the creation of an international criminal judicial authority raised by the representative of France and elaborated by him in a memorandum which he submitted to the Committee.¹¹⁴ The members agreed that, as it had been decided that under its terms of reference it was restricted to a study of methods, it was *a fortiori* precluded from taking up this matter which was not even mentioned in its terms of reference.¹¹⁵ However, the Committee decided that it was not precluded from drawing the attention of the General Assembly to the fact that the implementation of the principles of the Charter of the Nuremberg Tribunal and its judgment, as well as the punishment of other international crimes which may be recognized as such by international multipartite conventions, may render desirable the existence of an international judicial authority to exercise jurisdiction over such crimes.¹¹⁶

The second Sub-Committee of the Sixth Committee of the General Assembly examined the report of the Committee on the Progressive Development of International Law and its Codification regarding this matter, both as a separate item on its agenda and in connection with a proposal to have an interim body function until the election of the members of the ILC. A majority of the Sub-Committee considered, however, that this matter should be referred to the ILC direct. An argument supported by several representatives was that this work should be held over until the present trials of war criminals were further advanced. It was further decided that the ILC should not restrict itself to a mere plan of codification of offenses against the peace and security of mankind, but should prepare a draft code. The draft resolution of the Sub-Committee¹¹⁷ which directed the ILC to "prepare a draft convention incorporating" the principles of the Charter of the Nuremberg Tribunal and Judgment of the Tribunal was amended by the Sixth Committee to read that the ILC should "formulate" these principles. Thus all possibilities are left open as to the form in which the principles are to be laid down. The draft resolution as amended was approved by the General Assembly on 21 November 1947¹¹⁸ by forty-two votes to one, with eight abstentions.

The Draft Declaration of the Rights and Duties of States

During the First Part of the First Session of the General Assembly the delegation of Panama submitted for consideration a draft Declaration on Rights and Duties of States.¹¹⁹ After a discussion by its First (Political)

¹¹³ A/332.

¹¹⁴ A/AC.10/21.

¹¹⁵ Memorandum of the U. S. Representative, A/AC.10/36, p. 5.

¹¹⁶ A/AC.10/SR.21 and A/332, p. 2.

¹¹⁷ A/C.6/180/Rev. 1.

¹¹⁸ A/505.

¹¹⁹ A/19 and A/19/Corr. 1; A/101; A/170; A/285 and A/28/285/Corr. 1.

Committee during the Second Part of its First Session the General Assembly by resolution of 11 December 1946¹²⁰ decided to request comments and observations on this draft from all Member States and from national and international bodies concerned with international law. The comments and observations were to be transmitted to the Committee on the Progressive Development of International Law and its Codification which was to report thereon to the Second Session of the General Assembly.

The Committee, however, considered that the magnitude of the task and the limited number of replies from governments and organizations to the request for comments¹²¹ indicated that the question of substance should not be examined immediately but that further study of the question should be left to the ILC, which should use the draft Declaration proposed by Panama as one of the bases of their work.¹²²

The second Sub-Committee of the Sixth Committee of the General Assembly during its Second Session, to which this matter was referred, considered that it should not be subject to further postponement and proposed that it be now entrusted to the interim organ which the Sub-Committee recommended should be set up to prepare the work for the ILC.¹²³ However, the Sixth Committee rejected the proposal for an interim organ,¹²⁴ and adopted a French proposal that the Secretariat be entrusted with the preparatory work for the ILC.¹²⁵ Accordingly the draft resolution¹²⁶ finally proposed to the General Assembly and adopted by it on 21 November 1947, with five negative votes,¹²⁷ requests the Secretary-General to undertake the necessary preparatory work and instructs the ILC to prepare a draft declaration on the rights and duties of States taking as a basis of discussion the Panamanian draft and taking into consideration other documents and drafts on this subject. The resolution also requests the Secretary-General to draw the attention of the States to the desirability of submitting their comments and observations without delay.

Genocide ✓

The General Assembly during both its First and Second Sessions also considered the crime of genocide.¹²⁸ ✓

¹²⁰ *Resolutions adopted by the General Assembly during the Second Part of its First Session*, p. 62, Resolution 38 (I).

¹²¹ A/AC.10/39; A/AC.10/39/Add. 1; Add. 2; Add. 2/Corr. 1.

¹²² A/AC.10/SR.22; A/AC.10/SR.25; A/AC.10/53; A/333.

¹²³ A/C.6/181/Rev. 1.

¹²⁴ A/C.6/SR.59, pp. 1-4.

¹²⁵ A/C.6/196; SR.59, pp. 4-5.

¹²⁶ A/508.

¹²⁷ *Journal of the General Assembly*, Second Session, No. 60, p. 3; A/P.V./123, pp. 141-150.

¹²⁸ For an account of the discussion of this subject during the Second Part of the First Session see Raphael Lemkin, "Genocide as a Crime under International Law,"

By Resolution of 11 December 1946, the General Assembly condemned genocide as a crime under international law, and requested the Economic and Social Council to undertake the necessary studies with a view to drawing up a draft convention.¹²⁹ The Economic and Social Council, by Resolution of 28 March 1947, instructed the Secretary-General to undertake, with the assistance of experts in the field of international and criminal law, the necessary studies for drawing up such a draft convention, and, after consultation with the General Assembly's Committee on the Development and Codification of International Law, and, if possible, with the Commission on Human Rights, to submit it to the next session of the Economic and Social Council. The Secretary-General accordingly prepared a draft convention which he transmitted to the Committee.¹³⁰ In view, however, of the fact that comments from Member Governments were not yet available, the Committee felt itself unable to express any opinion on the matter.¹³¹ At its Fifth Session on 6 August 1947 the Economic and Social Council adopted a resolution instructing the Secretary-General to obtain the comments of Member Governments, and, in the meanwhile, to transmit the draft convention to the General Assembly.¹³²

On 23 September 1947, at its 91st Meeting, the General Assembly referred the report of the Economic and Social Council on this matter to the Sixth Committee.

The Sixth Committee, after considerable discussion, referred the question of the procedure to be followed to its Second Sub-Committee, the substance of whose report was adopted by the Sixth Committee, and embodied in the resolution on genocide adopted by the General Assembly on 21 November 1947.¹³³

In this Resolution the General Assembly reaffirmed its Resolution 96 (I) of 11 December 1946 on the crime of genocide, and declared that genocide is an international crime entailing national and international responsibility on the part of individuals and states, but noting that a large majority of the governments of Members of the United Nations had not yet submitted their observations on the draft convention prepared by the

this JOURNAL, Vol. 41 (1947), p. 145; also Wellington Koo, Jr., "Some Aspects of the Work of the Legal Committee of the General Assembly during the Second Part of the First Session," cited above, note 11, at p. 640.

¹²⁹ *Resolutions adopted by the General Assembly during the Second Part of its First Session*, p. 188. Resolution 96 (I).

¹³⁰ Letter of the Secretary-General, 10 June 1947, UN Document A/AC.10/47; text of Draft Convention, A/AC.10/41, A/AC.10/42/Rev. 1 and Add. 1.

¹³¹ Letter of Chairman of the Committee to the Secretary-General, 17 June 1947, UN Document A/AC.10/55.

¹³² Resolution 77 (V), UN Document, E/573; A/362.

¹³³ Report of the Sixth Committee, A/510, as amended by Joint Amendment of Cuba, Egypt, and Panama (A/512), an Amendment of China (A/514): A/P.V./123, p. 161 and fol.

Secretariat, requested the Economic and Social Council to continue its work, to proceed with the completion of a convention, taking into account that the ILC had been charged with the formulation of the principles of the Nuremberg Tribunal, as well as the preparation of a draft code of offenses against peace and security, and to submit a report and convention to the Third Session of the General Assembly. ✓ ✓

Teaching of International Law

At the Second Session of the General Assembly a proposal was submitted to the Sixth Committee by the delegation of Bolivia that the General Assembly should request the governments of Member States to take appropriate measures to extend the teaching of international law in all its phases, in the universities and higher educational institutions of each country over which such governments might have influence or control, or to initiate such teaching where it is not yet provided, and, in particular, to promote similar teaching regarding the aims, purposes, structure and operation of the United Nations.¹³⁴ The Member Governments were to be further requested to give to the Secretary-General the fullest possible coöperation with a view to facilitating the preparatory work on the development of International Law and its codification and to support any individual and private effort to these ends undertaken in their countries. ✓

These proposals were accepted by the Sixth Committee and adopted unanimously by resolution of the General Assembly at its 123rd Plenary Meeting on 21 November 1947.¹³⁵ ✓

Conclusion

In the work of the General Assembly in discharge of its duties under Article 13, 1(a), of the Charter, an important stage has, therefore, just been completed. A fresh start has now been made in the revitalization and strengthening of international law. The movement for the codification of international law has been given a new stimulus after a lapse of almost two decades since the failure of the Hague Conference of 1930. A new standing commission has been set up to assist the General Assembly in the performance of this task. This body is to consist, when the election of its members has taken place at the third session of the General Assembly in 1948, of international jurists of recognized competence, who will act in their individual capacities and not as governmental representatives. They are appointed for a fixed term but on a part-time basis, and in this respect the nature of their service differs from that of the judges of the International Court of Justice, who have to devote themselves to full-time service. A greater share of the research work inevitably involved will therefore fall

¹³⁴ A/AC.6/178.

¹³⁵ Report of the Sixth Committee, A/509. A/P.V./123, pp. 156-160.

upon the Secretariat of the United Nations, working under the direction of the ILC¹³⁶ and with the coöperation of organizations throughout the world, which are concerned with international law.

The success of the work undertaken will depend not only upon the manner in which the members of the ILC, and those working with them, perform their task, but also upon factors of a more general character beyond the sphere of the ILC itself. Should the faith of those who have labored to bring into being this new commission have proved justified, the ILC may take its place as a permanent organ of the General Assembly and constitute an influential factor in international organization. *N*

¹³⁶ This was fully realized by those delegations who proposed in the Sixth Committee of the General Assembly during the second session that the members of the ILC should work on a part-time basis instead of on a full-time basis as originally recommended. Several representatives urged that since the ILC was to work on a part-time basis "it would have to be assisted by a Secretariat which would not only act as an administrative body but would constitute a center of scientific research." UN Doc. A/C.6/193, p. 7. The report of the Second Sub-Committee states that "the Secretary-General should be asked to place at the disposal of the ILC such personnel and facilities as the Commission desired for discharging its functions and the Secretary-General thought practical for helping the ILC in this task. The Sub-Committee would not rule out the possibility that for this purpose the Secretary-General might have to engage temporarily certain experts on matters to be dealt with by the ILC." A/C.6/193, p. 7. See also Article 14 of the Statute of the ILC, A/504, p. 4.

EDITORIAL COMMENT

JOHN BASSETT MOORE

Judge Moore was born December 3, 1860, in Smyrna, Delaware, and died in New York City on November 13, 1947. He thus lived to be nearly eighty-seven years old and leaves behind a memory as the greatest authority on international law and as a character that became the envy of all who knew him. His ethical standards were so high as to win the admiration of all those who appreciated him.

Mr. Moore's contributions to human welfare were almost unlimited in number. His first public engagement was from 1885 to 1891 in the Department of State. After passing a Civil Service examination, he was selected by Secretary Bayard as a law clerk. Soon all the affairs of the Department drifted instinctively into Mr. Moore's hands. His first instruction was in connection with the Hale Claim in Buenos Aires. When Mr. Bayard read the proposed note of instruction and found himself unable to suggest any change in it, he knew at once that he had found a genius. Mr. Moore was in turn the Secretary for the North Atlantic Fisheries Commission, for the Samoan Condominium, and for various other commissions centering in the Department of State. He began the preparation of a Digest of International Arbitrations as a proposed supplement to Wharton's Digest, but the work soon developed into a six-volume study of the arbitrations which man has undertaken in his more deliberate and peaceful moments. Forever afterwards Mr. Moore remained a pioneer in international arbitration and became a devotee of peace. He soon, by virtue of the profundity of his knowledge, became the unquestioned authority on international law in all its phases. The International Adjudications, of which seven volumes appeared before his death, are in a sense a revised edition of his original work. This work enlisted all the scientific devotion of this great student, and though much sought after as a practical man of affairs, science always engaged his major affection.

In 1890 Mr. Moore married Helen Frances Toland of Philadelphia, and Mrs. Moore continued to grace his life and add sweetness to all his affairs by a devotion that lasted until his dying day. Three daughters of the marriage are now themselves married and added numerous grandchildren to Mr. Moore's cup of happiness. Undoubtedly his domestic bliss had much to do with his capacity to work.

In the early nineties he realized that President Cleveland was getting beyond his depth in espousing the cause of Venezuela in the controversy with Great Britain concerning British Guiana. Mr. Moore determined to get the facts before President Cleveland and did so in a letter written to

his Postmaster General. When Cleveland observed what he had been doing, he at once reversed his position, and thus peace with Great Britain was assured. Mr. Moore worked closely with Secretary Gresham just before the latter's unfortunate death. Mr. Gresham has left us some appreciation of Mr. Moore's greatness.

In 1898 he was called back to the Department as Assistant Secretary and later in that year was appointed by President McKinley as Counsel and Secretary of the Commission which drew up the treaty with Spain. As can well be imagined, the laboring oar was pulled by Mr. Moore. I would say that this was the last peace treaty ever made, being in no sense comparable with that of Versailles.

When Mr. Moore came back from Paris he at once entered into the closest relationship with Secretary Hay, notably in the Boxer Rebellion case in which Mr. Moore directed the instructions to Mr. Conger at Peking and also in the instructions issued to Mr. Swensen in Copenhagen in connection with the purchase of the Danish West Indies. Had Mr. Moore's proposals been accepted, we should have acquired the Virgin Islands for four million dollars. As it is they cost the United States twenty-five millions in 1916.

Mr. Moore is perhaps best known to the general public by his standard work, the *Digest of International Law*, of which eight volumes appeared in 1906. So heavily had this work fallen on Mr. Moore's shoulders that he suffered a nervous breakdown after completion of the work. He then was stimulated to partake of a vacation—almost the first in his life—lasting over two years. He traveled much of the time and acquired useful information of Europe and the Near East—information which helped him maintain his balance when in 1914 the European nations went to war. Throughout his life he considered the 1914 war unnecessary and blamed Woodrow Wilson and his inexperience in international affairs for its development.

In 1913 Mr. Moore permitted himself to be persuaded to return to the Department with the rank of Counselor. He well knew the difficulties before him, but he was wont to say that the longer he knew Wilson the less he thought of him, whereas the longer he knew Bryan the more he thought of him.

Having committed himself only for a year, it was not too hard for Mr. Moore to leave the Department in the spring of 1914. He was dismayed by President Wilson's ineptitude in dealing with Huerta in Mexico. In the summer of 1914, the European war began and Mr. Moore was overwhelmed by clients seeking his expert knowledge. Mr. Moore did his level best to keep Woodrow Wilson straight on neutrality problems and particularly on the position of armed merchantmen, but it was too difficult for him to debate with President Wilson, and most of his advice was not taken. In due time we became a party to the war on legal grounds

which cannot stand the light of examination. Mr. Moore acted like a good soldier and respected the Presidency of the United States. Not a sign can be found in Mr. Moore's writings which indicates his personal disappointment with Wilson, but the Chairman of the Foreign Relations Committee, William Stone, recognized the fact that in following Wilson into the European war we were abandoning the American tradition.

In 1910 he was a member of the American Delegation to the Fourth Inter-American Conference at Buenos Aires, and in 1912 served on the Commission of Jurists at Rio de Janeiro. During the war Mr. Moore was on the Executive Committee of the American Red Cross and head of the New York office. He also was Vice-Chairman of the Inter-American High Commission established at the Inter-American Financial Congress, and throughout its active career did the major work of organizing the office.

Mr. Moore, who had read much all his life, was not enamored of the League of Nations, which he regarded as a flimsy device to hold down the *status quo*. His article in Duggan's "The League of Nations, the Principle and the Practice" is still the classical criticism of that institution.

To Mr. Moore's great surprise, he was elected a Judge of the Permanent Court of International Justice in 1921. Mr. Root had advised his colleagues in Europe that Mr. Moore would be much more useful than he. "He has an accurate mind, great learning in international law, and practical experience in international affairs. . . ." As in the case of all his appointments, Mr. Moore took the assignment seriously and soon became known as the principal Judge of the Court. It was not only his profound knowledge of international law, but his proverbial tact, that soon won him the esteem of all his colleagues. He declined the presidency of the Court on more than one occasion, believing that such an office should not be given an overseas judge.

In 1922/23 Mr. Moore presided over the Conference to deal with the subject of the use of radio and aircraft in time of war. In 1924 he retired from his professorship at Columbia, and in 1928 he resigned as Judge of the Court, in order to devote himself exclusively to his scientific obligations.

Although illness caused his retirement as a student from the University of Virginia, the universities of this country later vied with each other in showering Mr. Moore with honorary doctorates in law. In 1927 he was the recipient of the Theodore Roosevelt Medal. It may not be generally known that he furnished Theodore Roosevelt with an argument in advance justifying the subsequent seizure of the strip known as the Canal Zone. From 1928 on until the Carnegie subvention was withdrawn he devoted himself to the *International Adjudications*. After January, 1944, when he suffered a heart attack, he was not capable of working any longer, but his pioneer work stands as a monument to one of the greatest thinkers the world has ever known. Mention might be made of the fact that the trustees of the Equitable Life Insurance Company took a secret vote as to who

in their ranks was the best story-teller. Mr. Moore received every vote but his own, and the writer can remember that a friendship of forty years left Mr. Moore with a fund of anecdotes that was by no means exhausted by time. Mr. Hackworth, the former Legal Adviser of the Department of State, often sought Mr. Moore's advice, from which F. D. R. might have profited greatly. Mr. Hackworth is wont to say that in Mr. Moore's presence he felt that he was in the presence of the Pope. If so, it was a humorous Pope, because Mr. Moore had the charming facility of clothing his profound thought in the material of an anecdote. That charm died only with the man himself. It has fascinated many friends and students who sat at his knee with undisguised reverence. In writing for the *American Bar Association Journal* on Mr. Moore's life, the writer affirmed the following estimate of the man:

Not without reason did John Bassett Moore become the master of international law and the acknowledged dean of the profession. Throughout his life he exhibited a high character, an enviable knowledge of private and of public law and of history, an appreciation of human and national psychology, great industry, the courtesy of an innate diplomat, objectivity, tact, tolerance, deference, unusual modesty, and a rich fund of humor.

EDWIN BORCHARD

FINDING INTERNATIONAL LAW

The availability of materials on international law is an unremitting problem for those who work in the field. While at times the problem may be merely one of knowing what to look for and where to look, more often the difficulty lies in the fact that materials are not readily accessible. With reference to the first difficulty, Clyde Eagleton has recently pointed out that, since lawyers are supposed to know all about law, the ignorance and skepticism about international law exhibited by the average practitioner has naturally influenced laymen.¹ It is unfortunately true that lawyers do not always recognize international law when they have resort to its principles to win a case. The tools employed by the practicing lawyer sometimes tend to conceal from him the fact that the municipal law upon which he relies embodies the requirements of international law. For example, the *General Digest* for the years 1941-1942 listed only 42 decisions under the rubric "International Law." By making his own index and by diligent effort, the writer was able to discover a total of 124 cases decided by United States courts during that period in which the decision turned upon some question of international law.² Most of these cases are

¹ This JOURNAL, Vol. 41 (1947), p. 438. See R. H. Smith in same, p. 906.

² These cases are reported or digested in Lauterpacht's *Annual Digest and Reports of Public International Law Cases, 1941-1942*. For 1943-44 the *General Digest* lists 40 cases under "International Law." The writer has collected 74 for the same period for inclusion in the 1943-44 *Annual Digest*.

indexed in the *General Digest* under such rubrics as "Admiralty," "Courts," "Criminal Law," "Shipping," or "War," although some are readily recognizable as international law under labels such as "Aliens," "Ambassadors and Consuls," or "Treaties." Some of the cases listed in the *General Digest* as "International Law" have no apparent relation to that subject,³ which may suggest that all that glitters is not gold.

Courts have found it possible to give judicial enforcement to many a principle of international law without the necessity of referring by name to international law in the opinion.⁴ The "reception" of international law into national law probably explains this lack of recognition. The national judge or the practicing lawyer can frequently content himself with the view that it is municipal law which is being applied, without being more than dimly aware that the law of the land is frequently required on the basis of some international obligation assumed by the State under treaty or customary international law. Those who worry excessively about the problem of enforcing international law might well inform themselves of its unspectacular day-by-day enforcement by municipal courts as the law of the land.

The institution by this JOURNAL of a Department through which a deliberate and comprehensive effort will be made to report, digest, or cite cases involving questions of international law is welcome and will fill a long-felt need. Looking beyond what is at present contemplated, it would be of inestimable value to the international lawyer if some day he could expect an *International Law Reporter*, perhaps along the lines of *American Maritime Cases* or *U. S. Aviation Reports*.

However, it is the inaccessibility of materials which presents the greatest difficulty. For decisions of foreign courts we are largely indebted to Lauterpacht's *Annual Digest and Reports of Public International Law Cases*. The problem here is not merely the difficulty of collecting cases—a task for which national correspondents familiar with national sources and official and unofficial reports are essential—but of translating them so as to make them a ready tool. For the years 1919–1942 the *Annual Digest* has digested or reported more than 2900 cases. The recent tendency to include more verbatim reports and fewer digests is to be welcomed. Perhaps official support and financing through the United Nations might develop the undertaking into a genuine *International Law Reporter*.

Similarly, the United Nations might promote or sponsor the compilation of national digests of State practice comparable to the *Digest of International Law* prepared by John Bassett Moore and the work of similar

³ See, for example, *Viereck v. U.S.*, 130 F. 2d 945; *U.S. v. Kelly*, 51 F. Supp. 362.

⁴ Even international tribunals have fallen into this practice. Note the few references to international law in the decisions of the American and Panamanian General Claims Arbitration under the Conventions of 1926 and 1932. *Report of Bert L. Hunt, Department of State Arbitration Series*, No. 6.

character by Green H. Hackworth.⁵ Special studies like Arnold D. McNair's *The Law of Treaties—British Practice and Opinions* are needed.⁶ Collections of national constitutional provisions, legislation, and regulations dealing with such topics as treaty-making, the relation between international law and municipal law, the protection of aliens, and human rights⁷ would be of invaluable aid to the international lawyer.

Collections such as the *Fontes Juris Gentium* have served a useful purpose either as a handy index or (particularly in the volumes which digest the diplomatic correspondence of European States) as a convenient source-book. Walter Schiffer's *Répertoire of Questions of General International Law Before the League of Nations, 1920-1940* (Geneva Research Centre, 1942) provides a useful guide to League of Nations documents which deal with international law. A comparable guide for United Nations documents will soon become essential.

Existing treaty collections such as those of Martens, the League of Nations Treaty Series, the United Nations Treaty Series, the U. S. Treaties and Other International Acts series can still be usefully supplemented by Hudson's *International Legislation*, the publication of which, it is hoped, will be continued. The rapid completion of the Hunter Miller *Treaty Edition* is devoutly to be hoped for; and a loose-leaf service of Treaty Annotations is desirable.⁸

The texts of occasional arbitrations such as the *Réclamations Britanniques dans la Zone Espagnole du Maroc* (The Hague, 1925) and the *Finnish Ships Arbitration* (London, 1934) are frequently hard to come by. Securing the documentation of many international conferences is often a major effort. Attempts to obtain contemporary diplomatic correspondence frequently meet an official tabu.

The materials with which the international lawyer must work are manifold. They exist, and they should be made more accessible. The United Nations can perform an important service and encourage the progressive development of international law by promoting the collection and publication of these materials.

HERBERT W. BRIGGS

⁵ See suggestions made by the United Nations Secretariat in *Methods for Encouraging the Progressive Development of International Law and Its Eventual Codification*, U.N. Doc. A/AC.10/7, May 6, 1947; this JOURNAL, Vol. 41 (1947), Supplement, p. 111.

⁶ See Memorandum in McNair, pp. 553-556, G. Schwarzerberger, "The Inductive Approach to International Law," in 60 *Harvard Law Review* (1947), pp. 539, 561.

⁷ It is understood that the United Nations will shortly publish a *Year Book of Human Rights*.

⁸ See Report of the Committee on Publications of the Department of State, 1947, *Proceedings, American Society of International Law, 1947*.

THE LAUSANNE SESSION OF THE INSTITUT DE DROIT INTERNATIONAL

The Session of the *Institut de Droit International* which was held in Lausanne, Switzerland, from August 6th to 12th, 1947, under the presidency of Baron B. Nolde, after the inactivity—*force majeure*—of ten years, was marked by a heartening resumption of scientific activity and by important and useful reforms of an administrative character. Three resolutions were adopted after most thorough and stimulating discussion on the subjects of (1) The Fundamental Rights of Man,* (2) Conflicts of Law Concerning "Proof" and (3) The Codification of International Law.*

The *Institut* revised its rules concerning the nomination and election of new members, as well as the methods for the study and discussion of new subjects. It also established a *Fondation Auxiliaire* to administer the funds of the *Institut*. Fifteen new members and twelve Associates were elected, including M. Krylov, the Russian representative on the Court of International Justice. Thirty-five members coming from sixteen different nations participated in the Session. Philip Marshall Brown was the only American member able to attend.

The enforced inactivity of the *Institut* during the past ten tumultuous years naturally entailed serious losses in its membership, notably that of M. Nicholas Politis, former Greek Minister for Foreign Affairs, who had long been a most active and valuable member. The *Institut* also was shocked and saddened during the Session itself by the death of M. André Mercier, who for so many years had been its devoted and efficient treasurer. It was painful to note the state of exhaustion of a considerable number of those who survived the ordeal of war under the terror and humiliation of Nazi and Fascist domination. One could not fail to sense also the paralyzing effect of the terror of Russian Communism that hangs like a miasma over the whole of Europe.

The Lausanne Session must be considered on the whole as of memorable significance by its reaffirmation of faith in the vitality of international law, in spite of the innumerable heinous crimes committed by the German Nazis, the Italian Fascists, and the Japanese, not omitting, sad to recall, the crime of aggression against Poland by the Soviet Union in 1939. The thorough reorganization of the *Institut* and the infusion of new blood gives good reason to expect renewed and fruitful activity for the cause of international justice, order, and peace.

The next Session of the *Institut*, which will mark the seventy-fifth anniversary of its founding in Brussels, will be held in Belgium in 1948 under the presidency of M. Charles de Visscher, who for so many years was the devoted Secretary of the *Institut* and is now a member of the International Court of Justice at The Hague.

PHILIP MARSHALL BROWN

*For texts see below, p. 167.

INTEGRITY OF INTERNATIONAL INSTRUMENTS

It is difficult to conceive of the possibility of making substantial progress in the development of international law unless a scrupulous respect obtains for the integrity of international instruments. Yet a tendency now seems to prevail in some quarters to undermine that respect by torturing the meaning of great international instruments and by forcing them to serve purposes for which they were never designed, purposes at variance with the desires entertained by Governments when the instruments were brought into force.

Evidence of this tendency was supplied by the International Military Tribunal at Nuremberg when it gave a spurious application to provisions of the Paris Treaty for the renunciation of war as an instrument of national policy. More serious, however, is a current disposition to distort provisions in the Charter of the United Nations in order to marshal support for reforms which, however desirable in themselves, have not been effected by the Charter itself.

An unofficial organization—the American Association for the United Nations—has recently sought to draw the attention of the Supreme Court of the United States to the provisions of Articles 55 and 56 of the Charter, in connection with pending cases which involve the application of American law to restrictive covenants in private instruments concerning the sale or lease of lands to Negroes.¹ The “brief” of the Association does not quote the entire text of Article 55, but it submits that inasmuch as the Charter has become a part of the “supreme law of the land” in the United States, certain provisions in Article 55 have the effect of providing municipal law for the United States.

Chapter IX of the Charter, which includes Articles 55 to 60, outlines a program of “International Economic and Social Coöperation.” It sets forth certain objectives which “the United Nations”—this term is used in the Charter to refer to “the international organization . . . known as the United Nations”—is to endeavor to accomplish, and the means to be adopted in that endeavor. Article 55 provides:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

¹ Motion for leave to file brief, and brief of the American Association for the United Nations as Amicus Curiae, in *Shelley v. Kraemer* and other cases. Supreme Court of the United States, October Term, 1947.

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

By Article 56,

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Articles 57 and 58 deal with Specialized Agencies and Article 59 adds a provision for negotiations with reference to the "creation of any new specialized agency required for the accomplishment of the purposes set forth in Article 55." Article 60 then adds:

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

In other words, Chapter IX is a schematic outline of functions assigned to the Organization by its Members. It directly places on the States Members only the responsibility involved in their pledge in Article 56 "to take joint and separate action in coöperation with the Organization."²

On this view of the scope of Chapter IX it would seem to be a gratuitous suggestion by the American Association for the United Nations that the Constitutional reception of these provisions into the "law of the land" of the United States has in some way changed the content of the local law.

² This view of Article 56 is strengthened upon a reading of the French version: "Les Membres s'engagent, en vue d'atteindre les buts énoncés à l'article 55, à agir, tant conjointement que séparément, en coopération avec l'Organisation."

It is true that some delegates at the Conference in San Francisco expressed a desire to go further in the direction of a commitment to separate action. This was opposed by the U. S. delegation, and the records of the Conference support the conclusion that the opposition prevailed. See 10 *Documents of the United Nations Conference on International Organization*, pp. 39, 40, 52, 57-58, 74-75, 83, 99-100, 127-128, 130, 139-141, 161. The history is summarized in the report made to the President by the Secretary of State on June 26, 1945, p. 115, as follows: . . . "the United States Delegation deemed it perfectly appropriate for the member states to pledge themselves to cooperate with the organization for the achievement of these purposes. On the other hand, the view was advanced that the further element in the Australian proposal calling for national action separate from the international organization went beyond the proper scope of the charter of an international organization and possibly even infringed on the domestic jurisdiction of member states in committing them to a particular philosophy of the relationship between the government and the individual. The pledge as finally adopted was worded to eliminate such possible interpretation. It pledges the various countries to cooperate with the organization by joint and separate action in the achievement of the economic and social objectives of the organization without infringing upon their right to order their national affairs according to their own best ability, in their own way, and in accordance with their own political and economic institutions and processes."

The Charter is limited to setting out a program of action for the Organization of the United Nations to pursue, in which the Members are pledged to coöperate. It does not effect any results beyond fixing in general terms the aims of the program and conferring powers and exacting pledges for achieving them. To the extent that it has been incorporated into American municipal law,³ it can have no larger effect. Moreover, none of its provisions has the self-executing character which is essential to the enforcement of a treaty provision as a part of the municipal law of the United States. It is a clear distortion to read Article 55(c) as a "mandate" to "the courts of all member nations."

The text of Article 55 (c) has not yet been effectively implemented by the United Nations; the "human rights and fundamental freedoms" to which it refers have not yet been defined. Even when such action has been taken, when recommendations have been made to Members by the General Assembly, or by the Economic and Social Council acting under Article 62 of the Charter, some "execution" by the Government of the United States would be required before the purposes set forth in Article 55 (c) could in any way become obligatory in the internal law of the United States.

The American Association for the United Nations is on more solid ground in directing attention to the international policy of the United States as reflected in Chapter IX of the Charter. Assuming the state of American law to be such that the fourteenth amendment to the Constitution calls for the Supreme Court's enunciation of a national policy with regard to restrictive covenants, the Association has properly insisted that the international policy of the United States is to be borne in mind in the formulation of such a national policy; of course national policy should not be cast in a mould in which it would preclude realization of what has been established as international policy. The submission by the Association that Articles 55 (c) and 56 of the Charter "preclude all courts of the United States from entering any decrees which affirmatively support and enforce racial discrimination in the acquisition and occupation of property" seems to go beyond such insistence, however.

The usefulness of the Charter of the United Nations should not be misconceived. The Organization will endure only if its provisions are respected. A frame for a picture must not be mistaken for the picture itself, and the United Nations may need to be protected against some of its more ardent friends.

When reforms cannot be achieved through agencies of local government, it is often a temptation to seek to have them ordained from above and afar. Problems take on an illusory guise of simplicity if the forum of their con-

³ Some of the Members of the United Nations, it should be remembered, have no analogous doctrine of incorporation and reception of treaty provisions into the national law.

sideration can be shifted to a distant state or national capitol. And a failure there easily begets a further temptation to seek their solution by international action. Perhaps such progression is not to be condemned, but it should not be permitted to place strains on existing international legislation.

If Governments cannot have confidence that the instruments by which they bind themselves will not be made to serve unintended purposes, if respect is not paid to the terms and tenor of the obligations imposed by such instruments, the result may be a reluctance to assume further commitments and the progressive development of international law may be seriously retarded. An important function of the United Nations might thus be frustrated.

MANLEY O. HUDSON

CIVIL RESPONSIBILITY FOR COMMUNICATIONS BY OFFICIALS OF A FRIENDLY
FOREIGN GOVERNMENT

Under the exigencies of both World War I and World War II officials of friendly foreign governments often exercised some of the powers in the territory of another allied country. The scope of authority of officials acting in this manner with respect to their own nationals has often been regulated through bilateral agreements between the interested governments. Many legal problems arose during both wars because of the existence of large allied forces operating for long periods of time under their own officers and military laws on foreign soil. These problems have been the subject of detailed study.¹ There remains however, the question of the civil responsibility of such officials when their acts are related to the joint effort but not strictly within the jurisdiction of military authority.

A recent English case² involved the question of civil responsibility for an alleged libel of a fellow national on the part of a Czechoslovak military officer acting in England within the scope of his duties. The plaintiff was the diplomatic representative in Egypt of the Czechoslovak Republic during the recent war. The communication complained of was sent in England by the defendant in his capacity as Chief Military Prosecutor in the Czech army to the Military Office of the President of the Czechoslovak Republic, both officials serving in England for the time being in connection with the joint war effort. The matter complained of charged the plaintiff with conduct in the nature of traffic with the enemy during the performance of his diplomatic duties in Egypt. The charges complained of would, if true, have constituted serious criminal offenses and gross disloyalty to his country. The sole defense was that the communications were privileged.

¹ See Col. Archibald King, "Jurisdiction over Friendly Foreign Armed Forces," in this JOURNAL, Vol. 36 (1942), p. 539.

² Szalatnay-Stacho v. Fink, (1946) 62 Times L.R. 146; on appeal to the Court of Appeal, (1946) 62 Times L.R. 573; this JOURNAL, Vol. 40 (1947), p. 948.

Under the well-known rule of English and American law, if the communication was entitled to absolute privilege, the purpose or motive of the defendant would not be material. Under English law, absolute privilege in proceedings for libel is not recognized where the communication passes between persons of a lower level than that of ministers.³ Because the alleged libel took place in England, English law would ordinarily govern as the *lex loci delicti commissi*.⁴ However, at the trial before the King's Bench, it was proved as a fact that, under Czechoslovak law, the communication would have been entitled to absolute privilege. Mr. Justice Henn Collins agreed that the communication did not constitute a step in the proceedings of a military tribunal and was not an act of state between persons on the diplomatic level. Therefore, it was not absolutely privileged under English law. The defendant was held to have made the communication without malice in fact and therefore entitled to the defense of qualified privilege because of his official position. The case might have ended there, but, as often happens, Justice Henn Collins desired to amplify the grounds for his decision. This he did by the application of Czechoslovak law which, under similar circumstances, would have accorded the defendant an absolute privilege without the necessity of explaining the motives of his action. The dictum was expressed as follows:

If the comity of nations is ever to be applied, it should surely be applied where the document in question was published in this country only because the foreign government, being our allies, were our guests while their unhappy country was occupied by our common enemy.

Curiously enough, when the case was appealed, the Court of Appeal reacted strongly against this dictum although it upheld the decision upon the ground that the defendant did not act with malice and was therefore entitled to a judgment on the ground of qualified privilege. The court held that, in view of his office in the military establishment of the Czech Government, he was well within his right and duty to forward the information to the Military Office. However, the court strongly opposed any application of Czechoslovak law to proceedings in tort where the acts complained of occurred in England. "This would be to make an inroad on a very fundamental principle" and would have to be provided for by legislation.

Considering the case in its broader aspects, one wonders why the Court of Appeal adopted a viewpoint so legalistic. It was clearly in the interest of the common war effort that allied military officers should be absolutely free to exercise their function in England to the extent of being on the

³ H. Fraser, *Principles and Practice of the Law of Libel and Slander*, 1917, (5th ed.), p. 191.

⁴ See recent article by B. K. Kuratowski, "Torts in Private International Law," in *International Law Quarterly*, Vol. I (1947), p. 172.

alert for any disloyalty and freely reporting it to the proper authority of their own forces. The courts of England and the United States do not hesitate to subject the ordinary principles of private international law to the requirements of public policy. It is true that this generally operates to prevent the application of foreign law where the interests of the local state would be jeopardized. Here the state of war and the public acts of the British Government created what might be called a limited status of extraterritoriality for the armed forces of the Czechoslovak Republic. The Allied Forces Act of 1940⁵ conferred upon the members of the armed forces of the Allied Powers all such powers as are conferred by their own law "in matters concerning discipline and internal administration" subject however to the concurrent jurisdiction of the United Kingdom. In the case of the United States the limitations of the Act seemed not to be entirely satisfactory to the military authorities of the United States because these limited powers were extended by an exchange of diplomatic notes.⁶

Under these circumstances it would seem that the ordinary principles of the conflict of laws should yield in a civil proceeding between two officials of a friendly allied government not only through a liberal interpretation of the scope of "discipline and internal administration" but also by reason of the requirements of public policy and national interest. This interest was well described by Colonel King and Major Fairman of the American armed forces as follows:⁷

In theory, and in most cases in fact, the host country invites the friendly visiting forces to enter its territory in order to further its own national policy, as, for example, to defend its soil, to give or receive military instruction, or to engage in joint operations against the enemy. . . . It would be contrary to the interest of the host country to impose burdens upon the means whereby its own policy is to be carried out and a common end achieved.

In the last analysis, the recognition of absolute privilege in the instant case would have come about not because of the impact of Czechoslovak law itself, but because the demands of the public interest of the United Kingdom required that the Czechoslovak military official should be as free during the war period to perform his functions in England as in his own country, provided the rights of no British subject were invaded. The introductory note to the section of the American Restatement of the Law of Torts relating to Defenses to Actions for Defamation, correctly conveys this concept when it declares that: "Certain officials and others charged with the performance of important public functions shall be as free as possible from fear that their actions may have an adverse effect upon their own

⁵ 3 & 4 George VI, c. 51.

⁶ King, article cited, p. 557.

⁷ Charles Fairman and Archibald King, "Taxation of Friendly Foreign Armed Forces," in this JOURNAL, Vol. 38 (1944), p. 261.

personal interests.”⁸ To this extent, the reasoning of the Court of Appeal in the instant case has not adequately appraised the public interest and national policy of the allied governments during the war period.

ARTHUR K. KUHN

THE INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE

The idea of Pan-American solidarity, always inherent in Pan-Americanism, has steadily gained since the inauguration of the “good-neighbor-policy” and became of paramount importance with the outbreak of the Second World War. The development can be observed very clearly in the relevant resolutions adopted at Buenos Aires in 1936, at Lima in 1938, and at Panama in 1939. A first climax was reached in Resolution XV of the Havana Meeting of Foreign Ministers.¹ Resolution I of the Rio de Janeiro Meeting of 1942, called after the Japanese attack on Pearl Harbor, constitutes, it is true, a step backward. But the Mexico City Conference of 1945 produced the Act of Chapultepec² which, for the first time, went so far as to stipulate the “use of armed force to prevent or repel aggression.” This Act, binding only “during the war,” provided for the conclusion of a permanent Inter-American treaty to replace the Act of Chapultepec “following the establishment of peace.”

The conclusion of this treaty should have taken place at a special conference, to be held at Rio de Janeiro in the fall of 1945. Two obstacles arose. The first was the problem of the legality of the Act of Chapultepec and the new treaty under the Charter of the UN. This problem was solved by the insertion of Art. 51³ in the Charter at the San Francisco Conference. The second obstacle was the long political tension between this country and Argentina. Twice the date for the Rio Conference was fixed⁴ by the Governing Board of the Pan-American Union, but twice it had to be postponed, the first time at the request of the United States, the second time at the request of Uruguay. It was only in the Spring of 1947 that this long feud came to an end. In his speech before the Pan-American Union on Pan-American Day, April 14, 1947, Senator Vandenberg⁵ emphasized that “all” the American Republics must collaborate with each other to promote unity in this hemisphere and urged Canada to join also. The way had, at last, been cleared for the Rio Conference,

⁸ Restatement of the Law of Torts, 1938, Vol. 3, p. 224, Introductory Note to §§ 585-592.

¹ *The International Conferences of American States*. First Supplement. 1933-1940. Washington, 1940, pp. 360-361.

² *Inter-American Conference on Problems of War and Peace*. Final Act, Washington. Pan American Union, 1945 (printed), Res. VIII, pp. 40-44.

³ See this writer's Editorial Comment in this JOURNAL, Vol. 41 (1947), pp. 872-879.

⁴ Original date: October 20, 1945; first postponed to March, 1946, then postponed *sine die*.

⁵ *The New York Times*, April 15, 1947, pp. 1, 16.

Already during the first months of 1946 eight American governments⁶ had proposed projects for the Rio treaty and a special committee of the Governing Board submitted, on May 15, 1946, a report⁷ containing an analysis and a comparison of the projects submitted; they all start from the Act of Chapultepec and make full use of Art. 51 of the Charter of the UN. On June 27, 1947, the Governing Board resolved to undertake a consultation among the American governments on the principal points to be incorporated in the Rio treaty and, on July 14, 1947, a committee submitted to the Board its report on this consultation.⁸

The Conference took place from August 15 to September 2, 1947, at Rio de Janeiro or rather at the Hotel Quitadinha at Petropolis, forty-four miles from the capital. It adopted the Treaty⁹ and fifteen Resolutions.¹⁰ The Conference, well prepared¹¹ and well organized,¹² was a complete success.¹³ Twenty American Republics were represented,¹⁴ many by their Foreign Ministers;¹⁵ the United States delegation¹⁶ was likewise led by the Secretary of State. Two interesting and important problems as to

⁶ Bolivia, Brazil, Chile, Ecuador, Mexico, Panama, United States, Uruguay.

⁷ *Inter-American Conference for the Maintenance of Continental Peace and Security*. Pan American Union. Washington, 1946 (mimeographed), p. 143.

⁸ *Consultation on the principal points of the treaty to be signed at Rio de Janeiro*. Washington, 1947 (mimeographed), p. 37.

⁹ *Inter-American Treaty of Reciprocal Assistance*. Washington, 1947 (mimeographed), p. 7. The text is also reprinted in *Department of State Bulletin*, Vol. XVII, No. 429 (September 21, 1947), pp. 565-572; *The New York Times*, August 31, 1947, p. 26; *American Bar Association Journal*, October, 1947, pp. 1058-1060; *Current History*, October, 1947, pp. 229-231.

¹⁰ Final Act. Washington, 1947 (mimeographed), p. 7.

¹¹ The Governing Board had also—in 1945—prepared a Handbook for the use of delegates.

¹² The President of the Conference was the Foreign Minister of Brazil, Raúl Fernandes. Apart from a Central Commission, composed of the Chairmen of all the delegations, a Credentials Commission and a Commission of Redaction and Coördination, the Conference was organized in three Commissions: I (preamble, principles, general articles); chairman: Mateo Marquez Castro (Uruguay); II (measures to be taken in case of threat or acts of aggression); chairman: Ricardo J. Alfaro (Panama); III (procedures and organs); chairman: Luis Anderson (Costa Rica).

¹³ *Conferencia Inter-Americana para el mantenimiento de la paz y de la Seguridad del continente. Informe sobre los resultados de la Conferencia presentado al Consejo Directivo de la Unión Pan Americana por el Director General*, Washington, 1947 (mimeographed), p. 88 (hereafter cited as *Informe*). This report by the Director General, Alberto Lleras Camargo, is unusual for a document of this type. It is a most excellent and interesting report, giving a detailed legal analysis of the Treaty. Fine legal investigation is combined with blunt critique, where necessary, and courageous leadership for future developments.

¹⁴ List of delegations in *Informe*, pp. 74-79.

¹⁵ Yet the Rio Conference was not a reunion of the permanent organ, known as the Meeting of Foreign Ministers of the American Republics, but a special Inter-American conference.

¹⁶ *Department of State Bulletin*, Vol. XVII, No. 424 (August 17, 1947), pp. 325-326.

representation¹⁷ arose. The first one concerned the failure to invite Nicaragua, the *de facto* government of which had not been recognized by a majority of the American Republics. It seems that the rule of law is—as confirmed by the procedure applied by Chile at the time of the invitations for the Santiago Conference of 1923—that every American Republic has a constitutional right to be represented at every Inter-American conference, regardless of whether its *de facto* government is or is not recognized by the inviting State. Failure to invite would, therefore, constitute a violation of law and would deprive the conference of its Inter-American character. A special procedure, concerning the recognition of *de facto* governments through Inter-American consultation, was adopted during the recent war. Is this only an emergency measure or a basic new rule of Inter-American law? The Director General rightly emphasizes that the inviting State has no right of discrimination and points out that Brazil laid the problem of the invitation of Nicaragua before the Governing Board. It was the Governing Board which, after consultation of the governments, decided, in its session of July 28, 1947, not to invite Nicaragua. Brazil, moreover, left the sending out of invitations in general to the Governing Board.

Ecuador had, of course, been invited and had participated at the conference. But while the conference was in session, a *coup d'état* occurred in Ecuador and the Central Commission decided that the Ecuadorian delegate could not sign the treaty on behalf of his country. The problem calls for a permanent solution in the very Constitution of the Inter-American System, a Constitution to be made by the Bogotá Conference in 1948. It is certainly surprising to see Nicaragua and Ecuador excluded from an Inter-American gathering when they are normally represented at the General Assembly of the UN.

The Rio Conference was to be restricted to the working out of the treaty. Nevertheless a few other issues arose, including the adoption of a resolution concerning the Paraguayan civil war.¹⁸ The most important extraneous issue consisted of the battle over the inclusion of Inter-American economic coöperation; Mexico, Argentina, Chile, and Cuba had insisted on this topic while the United States wanted to see the Rio Conference restricted to Inter-American defense.¹⁹ Mexico had proposed the shelving

¹⁷ *Informe*, pp. 5-8.

¹⁸ For months prior to the Rio Conference a serious civil war had been going on in Paraguay and just at the time of the opening of the conference the insurgents were besieging Asunción. But they were, while the conference was still in session, defeated and fled. Another issue, Santo Domingo's charge that armed Communists are being trained in Cuba for the purpose of invading Santo Domingo and overthrowing the Trujillo-regime, was not brought before the Conference.

¹⁹ See *Department of State Bulletin*, Vol. XVII, No. 424 (August 17, 1947), pp. 324-325, and Secretary of State Marshall's speech at Petropolis on August 20, 1947: *D.S.B.* No. 426 (August 31, 1947), pp. 414-415.

of the economic problem but Cuba asked the inclusion in the treaty of provisions prohibiting "threats and aggressions of an economic character," thus linking the economic problem with that of security. A compromise resolution²⁰ was adopted providing for a basic draft agreement on Inter-American economic coöperation, to be prepared by the Inter-American Economic and Social Council, and submitted to the Bogotá Conference; the latter has to act upon the draft and to fix the date for a special Inter-American Economic Conference, to be held, probably at Buenos Aires, in the second half of 1948.

The Inter-American Treaty of Reciprocal Assistance is an inter-governmental treaty; the formula "in the name of their peoples" in the preamble has, as in the UN Charter, an ideological, but no legal, significance. The treaty consists of a preamble and twenty-six articles; it has been signed by nineteen Republics, but is open for signature—and not merely for adhesion—at Rio by the "American States."²¹ Nicaragua and Ecuador will thus be enabled to become original signatories of the treaty. Could Canada sign under this article? The treaty is subject to ratification and will come into force as soon as the ratifications of two-thirds of the signatory States have been deposited with the Pan-American Union.²² It is then to be registered with the Secretariat of the UN through the Pan-American Union.²³ The treaty is to remain in force indefinitely, but can be denounced by any contracting party by a written notification to the Pan-American Union; after the expiration of two years from the receipt of such notification the treaty ceases to be binding with respect to such State, but remains in force for all the other contracting parties.²⁴ It seems that this procedure has been borrowed from Article I, paragraph 3, of the Covenant of the League of Nations.

The Treaty formally condemns war and the contracting parties undertake in Article I not to resort to the threat or use of force in any manner inconsistent with the UN Charter. They obligate themselves to submit every controversy *inter se* to the Inter-American peace machinery before referring it to the General Assembly or the Security Council of the UN. The heart of the treaty is the obligation of mutual defense. It is, in this respect, the fulfillment of the ideas contained in the Havana Resolution XV and in the Act of Chapultepec, but goes much further than these two previous agreements. Contrary to the Havana Resolution, it is not restricted to aggression by non-American States; it contains more than the mere duty to consult; it is, finally, a treaty, clearly binding in law, whereas the legally binding validity of Inter-American

²⁰ Final Act, Res. IX.

²¹ Article 22.

²² Article 23.

²³ Article 24.

²⁴ Article 25.

resolutions is, to say the least, highly controversial. On the other hand, the Havana resolution had provided that all the signatories or two or more of them should proceed to negotiate the necessary complementary agreements so as to organize coöperation for defense and assistance. Contrary to the Act of Chapultepec the Treaty is permanent in character; the duties undertaken go beyond mere consultation; the Act of Chapultepec speaks only of the measures "it may be advisable" to take after consultation and contains nothing as to the binding character of measures agreed upon.

Contrary to the Act of Chapultepec, the Treaty, making full use of Art. 51 of the UN Charter, distinguishes "armed attack" from other forms of aggression. It distinguishes aggressions on American States by non-American and by American states.²⁵ It further distinguishes between aggressions within and outside of the "region" defined in Article 4. A combination of these different distinctions gives the following picture as to the legal situation under the different hypotheses: (1) Armed attack within the region of Article 4, by a non-American or by an American state;²⁶ (2) Armed attack outside of the region of Article 4, but within the territory of an American state;²⁶ (3) Armed attack outside of the region of Article 4 and outside the territory of an American state;²⁷ (4) Aggressions which are not armed attacks, whether inside or outside the region of Article 4;²⁸ (5) Threats of aggression, extracontinental or intercontinental conflicts, or any other fact or situation which might endanger the peace of the Americas.²⁸

Under hypotheses one and two an armed attack by any state against an American state is to be considered as an attack against all the American states. The state or states attacked have, under Art. 51 of the Charter, the right, but no duty, of individual self-defense. The other American states which have ratified the Rio Treaty have, under Art. 51 of the Charter, the right of collective self-defense; but this right is also made a duty by Article 3, par. 2, of the Rio Treaty. The Treaty imposes in these cases a double duty: that of individual assistance to the state attacked and that of consultation. Whereas the consultation can be initiated at the request, addressed to the Governing Board, by any American state which has ratified the Treaty,²⁹ individual assistance can legally be given only at the request of the state or states directly attacked.³⁰ But when such request is made there arises the legal duty to give individual assistance; until the decision of the Organ of Consultation, each contracting party de-

²⁵ Venezuela stood originally for two different instruments, the one covering aggressions by non-American, the other by American states. Argentina's move at Rio to bar collective action between American states was defeated.

²⁶ Article 3, par. 3.

²⁷ Articles 3, par. 3 and 6.

²⁸ Article 6.

²⁹ Article 3.

³⁰ Article 3, par. 2.

termines itself the immediate measures which it may individually take in fulfillment of its obligation. The Organ of Consultation is to meet immediately for the purpose of examining the individual measures taken and of agreeing upon the measures of a collective character; such collective measures must be taken, but they need not be of the same type and nature for all the American states. Hypotheses one and two cover the cases of armed attack against an American state within the region of Article 4, of armed attack against an American state outside of this region, but within the territory of an American state (as Hawaii) and of armed attack within the region of Article 4, although not against a member-state of the Inter-American System (European colonies, Canada, Greenland).

The "region" set up by Article 4 as a security zone³¹ runs, in the words of Senator Vandenberg,³² "from pole to pole. It is a gigantic ellipse—a great oval—encompassing North, Central, and South America and their surrounding seas." It includes not only the continental territories of all the twenty-one American Republics, but also parts of the Arctic Ocean and of Antarctica, and territories outside of the Inter-American System: European colonies, Canada, Greenland, but not Iceland. Are we to see in this "region" the present determination of the concept of the "Western Hemisphere"? It should also be noted that the "region" of Article 4 is not identical with the "Neutrality Zone" of the Panama Declaration of 1939 which, devised for other purposes, began only at the terminus of the United States-Canada boundary. With regard to this "region" several "Statements"³³ were made: by Guatemala, concerning Belice; by Argentina, concerning the Falkland Islands; by Argentina and Chile, renewing the claims of sovereignty over their respective "Antarctic Zones."³⁴ But it is clear, as the United States expressly stated, that the Rio Treaty "has no effect upon the sovereignty or national or international status of any of the territories included in the region defined in Article 4 of the Treaty."

Hypotheses one and two refer to armed attack against an American state by any state, non-American or American, and thus make the treaty not a mere alliance, but an instrument of reaction against aggression, whoever the aggressor may be. Nevertheless a special procedure is provided for in the case of armed attack by an American state.³⁵ In this case too there is not only the right of the victim to resort to individual self-defense, but, at the request of the victim, also the duty of the other American states individually to assist in collective self-defense and the duty of consultation. But the Organ of Consultation may call upon the contend-

³¹ A map of this zone is to be found in *The New York Times*, August 30, 1947, p. 7.

³² *Department of State Bulletin*, Vol. XVII, No. 428 (September 14, 1947), p. 504.

³³ Final Act, p. 7.

³⁴ See Philip C. Jessup in this JOURNAL, Vol. 41 (1947), pp. 117-119.

³⁵ Art. 7.

ing parties to suspend hostilities and restore matters to the *status quo ante bellum*, and then take the necessary measures for the peaceful settlement of the conflict. Only if one of the contending parties rejects these calls may collective measures be agreed upon; the rejection will be considered in the determination of the aggressor. This is the only contribution which the Treaty makes to the vital problem of the determination of the aggressor. Also the very different problem of the definition of aggression is avoided.³⁶

Armed attack³⁷ against an American state outside of the region of Article 4 and not within the territory of an American state—hypothesis three—constitutes equally an attack against all the American states. But in this case only the duty to consult arises: the Organ of Consultation, however, must take collective measures to assist the victim of aggression.

In the case of aggressions which are not an armed attack³⁸—hypothesis four—but which affect the sovereignty, independence, or territorial integrity of any American state, it is irrelevant whether such aggression has taken place within or outside of the region of Article 4. In any case there is only the duty to consult, but the Organ of Consultation must meet immediately and must take collective measures. In all of these cases, therefore, the Treaty excludes the attitude of neutrality. In the cases of threats of aggression—hypothesis five—there is also a duty to consult; the Organ of Consultation must meet immediately and agree upon the measures that “should” be taken; the taking of such measures is here optional.

The measures which each state may take individually or which may be agreed upon as collective measures are, in conformity with the Act of Chapultepec and with Articles 41 and 42 of the UN Charter, either diplomatic or economic measures³⁹ or the use of force. As the Organ of Consultation the Governing Board can act provisionally, until the regular Organ of Consultation meets.⁴⁰ This regular organ is the Meet-

³⁶ The *Informe* (pp. 44-45) speaks of the *descripción del agresor*, whereas it means the different problem of the definition of aggression.

³⁷ Armed attack constitutes aggression. As in Art. 51 of the Charter, it should, therefore, read: “unlawful armed attack.” Art. 9 gives only examples of armed attack and leaves the determination of other aggressions to the Organ of Consultation. Art. 9 (a) speaks also of unprovoked armed attack “against the land, sea or air forces” of an American State. If such attack is made within the region of Art. 4 or within the territory of an American State (as at Pearl Harbor), the case falls under hypotheses one and two and leads to the double duty of immediate assistance and consultation; if made outside of these areas (as against the American Fleet in the Mediterranean), only the duty of consultation arises.

³⁸ Article 6.

³⁹ Recall of chiefs of diplomatic missions, breaking of diplomatic relations, breaking of consular relations, complete or partial interruption of economic relations or of rail, sea, air, postal, telegraphic, telephonic and radio-telephonic or radiotelegraphic communications (Art. 8).

⁴⁰ Article 12.

ing of the Foreign Ministers of the American Republics which have ratified the Treaty.⁴¹ As the Director General points out,⁴² this is not the established organ of the Inter-American System, but a special Meeting, restricted to the foreign ministers of the Republics that have ratified the Treaty, whereas the Governing Board, as the provisional organ of consultation, is composed of the representatives of all the American Republics. But the states which have not ratified the Treaty are excluded from voting;⁴³ equally excluded from voting are the interested parties in the case of an Inter-American conflict.⁴⁴ All organs of consultation take decisions by a vote of two-thirds of the states which have ratified the Treaty.⁴⁵ The decisions concerning collective measures are binding upon all the states which have ratified the Treaty, whether they have concurred in them or not, with the sole exception that no state shall be required to use armed force without its consent:⁴⁶ "a combination of these two provisions may provide a workable substitute for the UN veto."⁴⁷

The Rio Treaty needs further implementation. Apart from the problem of Inter-American economic coöperation and an American Educational Charter for Peace,⁴⁸ the resolution⁴⁹ calling for a new codification of the Inter-American peace-machinery is of particular importance. It is a matter of record that this peace-machinery is actually, for many reasons, entirely inadequate.⁵⁰ Another resolution⁵¹ bars any excessive rearmament as a consequence of the Rio Treaty. Also the military implementation,⁵² the creation of a Permanent Military Inter-American Staff, envisaged in Resolution IX of the Mexico City Conference 1945, will come up

⁴¹ Article 11.

⁴² *Informe*, pp. 45-46.

⁴³ Article 14.

⁴⁴ Article 18.

⁴⁵ Article 17. This norm was, after debate, adopted. Argentina had stood for unanimity, Uruguay had originally proposed a mere absolute majority. Contrary to some voting norms of the UN Charter, the two-thirds majority is here that of the states that have ratified the Treaty, whether they are present at the consultation meeting or not. Art. 19 lays down the necessary quorum.

⁴⁶ Article 20. This norm was also adopted after debate. In their earlier proposals Brazil, Chile, Mexico, Panama and the United States suggested that the decisions be binding only upon those states which had concurred in them. The United States modified its original position in the sense of the present Art. 20; *Department of State Bulletin*, Vol. XVII, No. 425 (August 24, 1947), p. 367.

⁴⁷ L. Sohn in *American Bar Association Journal*, October, 1947, p. 1058.

⁴⁸ Final Act, Res. XIII.

⁴⁹ Final Act, Res. X; see also the preamble of the Treaty.

⁵⁰ See the sharp critique by the Director General and his telling remark that failure of such improvement would lead to the paradoxical situation of a system of sanctions without peace machinery (*Informe*, pp. 25-27).

⁵¹ Final Act, Res. XI.

⁵² The problem of U. S. help for the armament of the Latin American Republics and for standardizing equipment is also pending, since the Congress has not yet acted upon the respective proposals of the President of the United States.

at the Bogota Conference. The Treaty itself refers in Articles 11 and 21 to "existing organs or those which may in the future be established," for the consultation and for the execution of measures agreed upon by consultation. The Treaty itself gives new political functions to the Governing Board which is made an organ of liaison between the American Republics, the provisional organ of consultation and the organ of liaison with the UN.⁵³ From all of these points of view the Bogota Conference, charged with the complete reorganization of the Inter-American System, will have to act.

The Rio Treaty, probably the most important and most far-reaching treaty ever signed by the American states, points not only to future Pan-American developments and relates back to the Havana Resolution and the Act of Chapultepec: it constitutes a return to the ideas of Bolivar. It is very interesting to compare the Treaty with early Latin American projects,⁵⁴ with the early bilateral Bolivarian alliances⁵⁵ and with the treaties of Panama of 1826,⁵⁶ Lima (1848), the Continental Treaty, the Washington Treaty of 1856, and the Treaty of Lima of 1865.⁵⁷ In varying degrees we find in these treaties the same ideas which inspire the Rio Treaty of 1947.

But the Rio Treaty has also a character entirely different from all previous Inter-American treaties. Whereas the latter were treaties of an independent regional system—-independent also vis-a-vis the League of Nations—the Rio Treaty is a regional treaty within the system of the United Nations. The references to the UN Charter are frequent in the Treaty.⁵⁸ The Treaty is based on the strictly legal obligation of solidarity against aggression but this solidarity is built upon the exercise of the right of individual and collective self-defense under Article 51 of the UN Char-

⁵³ Article 15.

⁵⁴ *Martínez de Rosas, Catecismo político-cristiano*, Santiago, 1810. Juan Egaña, *Proyecto de una declaración de los derechos del pueblo de Chile*, 1810, reprinted in Ramón Briceno, *Memoria histórico-crítica del Derecho Público Chileno*, Santiago, 1849. The proposals of José Cecilio del Valle can be found in José Rodríguez Cerna, *Central América en el Congreso de Bolívar*, Guatemala City, 1938. Bernardo Monteagudo, *Ensayo sobre la necesidad de una federación general entre los Estados hispano-americanos y plan de su organización*, Buenos Aires, 1825.

⁵⁵ Colombia-Peru, July 6, 1822 (Venezuela: *Tratados Públicos y Acuerdos Internacionales de Venezuela*, Vol. I, 1820-1900, pp. 11-18). Colombia-Chile, Santiago, October 29, 1822 (work cited, pp. 19-24). Colombia-Mexico, October 3, 1823 (same, pp. 26-37). Colombia-Central America, Bogota, March 15, 1825 (same, pp. 43-49). Peru-Chile, December 23, 1822 (Ricardo, *Congresos y Conferencias en que ha tomado parte el Perú*, Vol. I, Lima, 1909, pp. 187-192).

⁵⁶ Raúl Parras Barrenechea, *El Congreso de Panamá*. *Archivos Diplomáticos Peruanos*, Vol. I, Lima, 1930.

⁵⁷ See Alberto Ullóa, *Congresos Americanos de Lima*, Lima, 1938, Vol. I. On the Lima treaties and the Washington Treaty also Aranda, Vol. I; on the Washington Treaty also Cerna, pp. 306-323.

⁵⁸ Articles 1, 2, 3, 5, 7, 10, 15, 24.

ter; one of the purposes of Article 51 is exactly to guarantee Pan-America a relatively autonomous position within the UN. The Rio Treaty is the first regional treaty for the implementation of Art. 51. It is, in the words of Senator Vandenberg, "not a substitute for the UN, but a supplement to the UN and part of its machinery." But the Treaty certainly had in view the fact that the Security Council is paralyzed by the veto; here as in the UN as a whole Art. 51 is being used more and more as a substitute, as *Ersatz* for the non-existing general collective security and sanctions. But, self-defense and Art. 51 gain, under such conditions, a very different meaning and become a technique pretty near to the old-fashioned right to resort to war, especially as there is no judicial control over the exercise of self-defense. True, under Article 5 of the Treaty the American States are bound, in conformity with Articles 51 and 54 of the Charter of the UN, to send immediately to the Security Council complete information concerning the activities undertaken under Article 51; true, under Article 3, par. 4, of the Treaty such measures of self-defense can be taken only until the Security Council has taken the necessary measures to maintain international peace and security. But if the Council, paralyzed by the veto, cannot act! For good reasons Senator Vandenberg has in his radio-address underlined the word "necessary," when speaking of the necessary measures to be taken by the Security Council.

The Rio Treaty is built entirely upon Art. 51 of the Charter and on the conception of "armed attack." It can, therefore, only be a system of self-defense, not a system of sanctions. The monopoly of the use of force is in the hands of the Security Council; the member-states can resort to force only under Article 51 and only against an armed attack. It follows that the Organ of Consultation can agree upon the use of force only under the above-named hypotheses one to three, but not under the hypotheses four and five. The Rio Treaty, which the Secretary of State has called a "significant example" for the whole UN, has, in consequence of its basis, nothing to do with collective security and sanctions, but only with self-defense. It makes use of the "collective self-defense" in two stages: collective self-defense individually exercised,⁵⁹ and collective self-defense on, so to speak, the second level, through collective measures agreed upon in consultation by states already exercising, if one can say so, the right of "individual collective self-defense." In an independent Inter-American System the collective measures would constitute sanctions; but in the Rio Treaty they constitute only later "collective self-defense." This necessary construction leads naturally still further away from the concept of self-defense in municipal law.

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⁵⁹ The Director General points out (*Informe*, p. 32) that the "collective" quality of "collective self-defense" does not lie in the application of collective measures, previously agreed upon, but in the right and duty to take individual measures of assistance by states which have not been the direct object of attack.

THE PROBLEM OF FOREIGN INVESTMENT

Mr. Willard L. Thorp, Assistant Secretary of State, on September 18 last addressed the First Hemispheric Conference of Stock Exchanges on the subject of the Development of International Investment, in which he summarized the elements of the successful placing of capital abroad. He pointed out that:

As engineers and technicians we are more than welcome; our skills are eagerly sought; but as businessmen, as entrepreneurs, we are often not so welcome. Sometimes we feel that at the same moment that our capital is sought, every obstacle is being put in the way of its use on a fair and equitable basis.

Among the many and complex reasons for this attitude, according to Mr. Thorp, is the feeling that the foreign investor is an "exploiter and not a contributor," that his interest is not in the local welfare, that his allegiance is to a distant stockholder, that when he has won the highest return possible he and his enterprise will withdraw.

Mr. Thorp also touched upon the preferred qualities of a foreign investor: If he expects security and remuneration he must not seek special privileges; his investment should not be a "quick in and quick out proposition," but should "work abroad over a long period"; he "must comply in spirit as well as in letter with the domestic laws . . . must scrupulously refrain from any action that might be regarded as interference in the political life of the country or the subversion of public officials"; he should work in association with local capital, promote local skills, be interested in the needs of the local community, respect the national integrity.

On the other hand Mr. Thorp (and this is important as coming from a high official of the State Department) pointed out certain reciprocal obligations due the investor abroad.

While the foreign investor cannot expect and should not seek special privilege, he can expect and should receive relative equality of treatment in business and tax matters with that accorded local capital. He can expect and should enjoy the same protection of his person and property as that enjoyed by nationals, the same access to courts and capacity to enter into contracts. He can expect and should enjoy reasonable remuneration for the risks of his enterprise, and certainty that he will receive just compensation if his assets are transferred to national ownership. Reasons of national security and welfare may, in certain circumstances, require limitations on the participation of foreign capital in local enterprise. But discrimination against foreign capital solely because it is foreign serves only to diminish world trade, employment, and well-being.

This address of Mr. Thorp raises the perennial and age-old question before the Department of State and business organizations of how to advance and protect American interests abroad. Recently the matter has been

taken up by the National Foreign Trade Council in connection with the proposed ITO Charter. Mr. Austin C. Foster, Chairman of the Treaty Committee of the Council, in an interview reported in the press on September 26 last, has proposed the implementation of the policy announced by Mr. Thorp through modern commercial treaties which would define certain basic rights of American investors, and among other things bar discrimination against American concerns abroad and protect them from nationalization movements in foreign countries. He appeared to hope for protection based upon the principle of equal opportunity and equal security such as is accorded foreign capital in this country.

Treaties of this sort have long been needed and often considered for two main reasons.

The first object is to give the Department of State an obvious basis for interposition to protect American interests in trouble abroad. The Department has, from time to time, issued seemingly strong assurances of protection of American business abroad but these generally contain some uncertain phrase such as "legitimate interests," "proper diplomatic protection," "just rights," or the like, which leaves the extent of protection in an indefinite state.

Most citizens are at a loss to know how to shape their foreign interests so as to warrant the support of their government in case of trouble. In the past the diplomatic protection of American business interests abroad has been refused for many reasons among which are lack of American nationality of the complainant, failure to exhaust local remedies, participation in local politics, unneutral conduct in time of civil strife, implication in fraud, collusion, misrepresentation, or other wrongful or criminal activities, participation in insurrectionary movements, wrongs incident to war or due to unsuccessful revolutionists. Space does not permit a detailed examination of these bars to protection.

Moreover, in the ordinary case the American investor as a stockholder in a foreign stock company may find difficulty in obtaining protection for the reason that it is the foreign entity which owns the property involved or has suffered the loss and not the stockholder, who has only an indirect equitable right or beneficial interest in the concern or its property and business. The Department has given support to complaints on the part of such beneficial interest but its action is not vigorous if the complainant represents only a small minority interest in the company.

The other main reason is reciprocal to the first, namely, binding the foreign countries to establish fair conditions for the treatment of foreign capital, a breach of which would be an acceptable basis for interference by the United States. This is the point where Mr. Foster's proposal may encounter the greatest difficulty.

The Republics to the south have for generations attempted to resist intervention on behalf of private foreign interests and to that end have

firmly embedded in their constitution or laws the theory (derived from the Calvo doctrine) that aliens are entitled to no better treatment than that accorded to nationals (whatever standard that may be) and may not call upon their government for aid unless and until they have applied for redress to the local authorities or tribunals and suffered what is called a "denial of justice"—a loose term subject to various interpretations.

Who would determine whether a "denial of justice" had occurred? In case of disagreement this question in a particular case might have to be arbitrated between the two governments which would entail considerable delay and uncertainty.

The same doctrine of national treatment is laid down in some Pan-American treaties of this century. In a convention signed at the Second International Conference of American States of 1901-1902 it was provided that states owe no obligation or responsibility to aliens outside those established by their own laws for their own citizens. In the resolutions of the Seventh International Conference of American States, 1933, it was declared that equality of treatment for foreigners and nationals under the local law was the maximum limit of protection that could be claimed. The application of this principle had been the subject of controversy between the United States and more than one Latin American Republic.

It is obvious that such a national standard of responsibility might prove to be a very illusory guarantee of security. A foreign government may, constitutional barriers apart, treat the rights and property of its own nationals as it wishes. It may or may not give fair compensation to them in case of confiscation of vested rights, invalidation of titles, cancellation of concessions or contracts; it may harass their businesses with intolerable exactions of one kind or another. In such cases it is free to enforce such internal policies as it pleases, which on the principle of national treatment would be disastrous to investments of aliens, and, indeed, might conceivably be motivated by such a purpose. The better view, however, is that there is an international standard of treatment to which foreigners are entitled regardless of how nationals may be treated by their own government.

American investors in Mexico, for example, still have vivid recollections of harassment, confiscation and injustice. Although Mexico has proclaimed repeatedly the need of American capital for the development of its resources, there are laws and decrees on the books making broad restrictions on the conduct of business or the exercise of professions by aliens. These would, in effect, require all foreigners desiring to participate as individuals or through corporations in any business relating to industry, mining, agriculture, cattle-raising, forests or real estate, first to submit their proposals to the Foreign Minister for a permit to engage in any of the designated occupations. Mexicans must control 51 percent of the stock of corporations organized to carry on such operations, and foreigners

are not as a rule allowed to acquire lands, waters, mines or mineral fuels, at any rate unless they subscribe to the Calvo doctrine.

How then will it be, in case the United States proposes a treaty to such countries cutting across such deep-seated policies?

Other efforts to limit intervention on behalf of private interests have been pressed by Latin countries. Among them is the so-called Drago doctrine (named from its Argentine originator) whereby governments agree not to have recourse to armed force for the recovery of contract debts claimed from one country by another as being due to its nationals, unless arbitration is refused or is abortive (Hague Convention II, 1907). This principle has today become greatly extended, for any use of armed force as an instrument of national policy has been generally repudiated, except for self-defense.

In this connection attention may be called to the war-time practice of seizing enemy property found within belligerent territory. This practice may well deter American investors from going too deeply into foreign fields. It was thought by eminent jurists that the ancient right of seizure had been so modified in the 19th century by treaty and practice for over one hundred years that a rule of international law existed condemning such seizures. However, this view was combatted by other writers and in this century they have been supported by contrary practice. Early in the first World War all property, rights, and interest of enemy nationals in this country were sequestered. Although at first such enemy property was proclaimed to be held in trust for the owners, subsequently Congress provided that it be held as security for the payment of American claims and a portion of it was eventually so used in the United States. The peace treaties authorized the liquidation of all seized enemy property and the use of the proceeds to defray the payment of private war claims. The action of the United States in respect of enemy property of all kinds taken over during the recent World War promises to follow a similar course. One of the latest expressions of American policy in this regard is an unequivocal statement by Secretary Byrnes in a letter to Representative Gearhart dated February 7, 1946, that "the Department is in basic agreement that the property in the United States of Germany and Japan and of their nationals resident in those countries should be available to meet American claims on account of losses resulting from the war."

From this all too brief sketch of the situation which confronts any attempt to carry out Mr. Foster's suggestions for the implementation of Mr. Thorp's pronouncement by means of modern commercial treaties, it is clear that the problem is not an easy one nor one soon to be solved, at least as a whole.

The problem was attacked on a broad front in 1930 by the conference at The Hague on the codification of international law. A serious effort was made to reconcile the views of governments relative to the responsi-

bility of states in respect of the treatment of persons and their property abroad. While the conference was useful in elucidating the positions of the different governments represented (including only half of the Latin American countries), the limited code (several important subjects being omitted) drafted in Committee failed to command the two-thirds vote required by the rules of the Conference, although it met the approval of a narrow majority.

The problem is also touched upon in the ITO Charter now under consideration by the United Nations Conference on Trade and Employment at Havana. This long and intricate instrument of 100 articles approaches the matter on an economic plane and not from the legal point of view as has heretofore been customary. It is not the intention to summarize this proposed constitution to govern world trade while it is in the course of revision. However, attention may be called to certain aspects of the plan which bear upon the existing system for the protection of property of foreigners. One of the half dozen trade objectives of the new Organization, which is to be a specialized agency of the United Nations, is "to foster and assist industrial and general economic development . . . and to encourage the international flow of capital for productive purposes."

There are numerous provisions relating to employment, tariffs, preferences, internal taxation, quotas, exchange controls, subsidies, access to markets and other matters concerning world trade. In this connection in the Chapter on "Economic Development" occur concrete proposals (Arts. 11, 12) bearing directly on the problem of international investment. The problem is thereby enmeshed in the machinery of international trade and its numerous interacting factors. International investment of course has its commercial and economic side, but the rights and duties of states in respect of its treatment abroad have heretofore, as indicated above, been regarded as involving chiefly questions of international law. To turn the problem about and give it mainly an economic aspect and subject it to economic and politico-economic principles is a novel departure from the traditional course of the past.

Art. 11 on "Means of Promoting Economic Development" after stating that this requires "among other things adequate supplies of capital funds, materials, modern equipment and technology, and technical and managerial skills," provides that:

. . . Members shall cooperate in accordance with Article 10 in providing or arranging for the provision of such facilities within the limits of their power and Members shall not impose unreasonable or unjustifiable impediments that would prevent other Members from obtaining on equitable terms any such facilities for their economic development.

In the next paragraph it is provided:

... no Member shall take unreasonable or unjustified action within its territories injurious to the rights and interests of nationals of other Members in the enterprise, skills, capital, arts or technology which they have supplied.

In Article 12 entitled "International Investment for Economic Development" Members recognize that the international flow of capital would be stimulated to the extent that they afford "opportunities for investment and security for existing and future investments."

The article then continues: Members recognize

(C) That, without prejudice to existing international agreements to which Members are parties, a Member has the right (i) to take any appropriate safeguards necessary to ensure that foreign investment is not used as a basis for interference in its internal affairs or national policies; (ii) to determine whether and to what extent and upon what terms it will allow future foreign investment; (iii) to prescribe and give effect on just terms to requirements as to the ownership of existing or future investments; (iv) to prescribe and give effect to other reasonable requirements as to the ownership of existing or future investments;

Article 12 further provides that the interests of Members may be promoted if they enter into bilateral or multilateral agreements relating to the opportunities and the security for investment and any limitations in respect of the rights mentioned in paragraph (C).

Subject to such rights and such agreements, Members undertake "to provide reasonable opportunities for investments and adequate security for existing and future investments and to give due regard to the desirability of avoiding discrimination as between foreign investments."¹

These provisions touch the heart of this problem. In substance the receiving country is recognized as having the rights to prevent interference in its internal affairs and national policies on account of an investment, to determine the extent and terms of foreign investment, and to prescribe the terms of ownership of existing or future investments.

Thus it would seem that diplomatic protection is ruled out, that conditions of operation may be controlled, and that vested rights and future ownership are imperilled. There is no provision for just compensation if the property is taken into public ownership, management or occupation, as provided in the Geneva draft. Everything which is now the subject of doubt and anxiety to present and prospective investors seems to be left to some kind of future negotiated agreement or to the exigencies of paragraph (C). This disposal of the problem can hardly be said to encourage and stimulate foreign investment. On the contrary it seems to admit the right

¹ These quotations are taken from the latest revisions of Articles 11 and 12 at the Havana Conference available on going to press.

of a government to deal with a foreign investment in ways heretofore condemned as unfair and unjust by standards of international law.

As this review indicates, the difficulties and risks attendant upon foreign investment are far from being composed. And the doubts expressed by Mr. Foster as to the effective protection of international investments under the Charter seem well founded. The proposals are couched in loose and vague language open to various interpretations by the parties, if not indeed meaning different things to different Members. Moreover, the stipulations are rendered even more difficult of application by exceptions or modifications apparently aimed to take care of various points of view and eventualities. Possibly to meet this unsatisfactory condition, the Organization may promote international agreements on measures designed to assure just and equitable treatment for foreign nationals and enterprises, including a general agreement or statement of principles as to the conduct, practice and treatment of foreign investments (Arts. 11 and 69). It seems that the Charter is thus drawn to accommodate conflicting situations and to rely on future negotiations or procedures to iron out controversies when they arise in the course of practical operations.

The Charter contains no clear bill of rights to guide the foreign investor. On the contrary a complaining Member must rely upon the workings of the machinery established to settle differences as they occur. He may make representations directly to the offending Member with a view to adjustment (as is the present practice), meanwhile keeping the Director-General informed of the discussions (Art. 89). In case of failure, the matter may be referred to the Executive Board or, with its approval, directly to the Conference of all Members. In either case the matter shall be investigated and recommendations made or a ruling given, as seems appropriate. The Executive Board may, with the consent of the parties, refer the matter to arbitration. Any ruling of the Executive Board may, upon request, be reviewed by the Conference (Art. 90) and the resolution of the Conference may be reviewed by the International Court of Justice through a request of the Organization for an advisory opinion (Art. 91). Finally, Members undertake not to have recourse to any other procedures for complaints and settlement of difficulties, and in particular are not to take unilateral action in advance of complaint to and final decision by the Organization (Art. 92).²

Thus a new method is established for the consideration and settlement of complaints and disputes arising in connection with the protection of foreign investments, other than through the foreign offices of the dissident states as heretofore has been the practice. In fact, it may be that complaints will be referred in the first instance to the Organization which will assume the functions heretofore exercised by foreign offices in such matters.

Thus it may be queried whether any real advance has been made toward

² On going to press, these Articles are still under consideration at Havana.

the solution of the problem of foreign investment. The widely divergent views as to the standard of treatment of foreigners are yet to be reconciled. While the so-called undeveloped countries desire outside capital for the promotion of their resources and the advantages flowing therefrom, they fear the attendant foreign intrusion and ownership and the possibility of diplomatic pressure in case of trouble. They have therefore in many instances assumed a defensive attitude against what they regard as foreign encroachments in their domestic domain and sought to escape their own short-comings by laws and treaties renouncing responsibility. They appear to have maintained this point of view in the ITO Charter.

L. H. WOOLSEY

THE CRIME OF "WAR-MONGERING"

On November 3, 1947, the General Assembly of the United Nations unanimously passed a resolution which, after noting the intent of the Charter to free the world of the scourge of war, and also to implement respect for fundamental freedoms, including freedom of expression,

condemns all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression.

The resolution further requested the members of the United Nations to promote friendly relations among nations, and to encourage information expressing the general desire for peace. It also directed communication of the resolution to the proposed Conference on Freedom of Information.¹

Passage of the resolution was preceded by a prolonged debate begun by the Soviet representative, Mr. Vishinsky, who charged that "war-mongering" was going on in the United States, Greece, and Turkey, and proposed a resolution recognizing "war-mongering" as a crime, and asserting the obligations of members of the United Nations to suppress it.² The resolution as finally passed deleted all allusion to specific countries, and refrained from declaring that "war-mongering" was a crime against the law of nations.

The United Nations Committee on the Progressive Development of International Law and its Codification has proposed to the General Assembly an International Law Commission with competence to consider the codification of international criminal law. When established this Commission will doubtless consider whether a crime of "war-mongering" exists or should exist in international law.³

Solution of the problem involves examination of the extent to which international law has recognized, on the one hand, that the giving of

¹ *United Nations Weekly Bulletin*, Nov. 11, 1947, p. 618; hereafter cited as *U.N.W.B.*

² The same, Nov. 4, 1947, p. 579.

³ *International Organisation*, Sept., 1947, Vol. 1, p. 491; *U.N.W.B.*, Nov. 4, 1947, p. 577, Nov. 18, 1947, pp. 649-50.

publicity to words or symbols is in certain circumstances an international crime, and on the other hand, that the human right of freedom of expression is subject to certain qualifications.

Is "war-mongering" a crime? Affirmative answers have been drawn from the general principle that states are under obligations to employ due diligence to prevent in their jurisdiction acts disrespectful of foreign states or dangerous to their domestic order, and acts instigating or encouraging aggression or other offenses against the law of nations; from the practice of states in providing by domestic legislation for the punishment of such actions; and from the recognition of such acts as international crimes in international treaties, international conferences, and international tribunals.

Mr. Vishinsky deduced the obligation not to tolerate and to punish "war-mongering" from the purposes of the United Nations, to maintain international peace and security, and to develop friendly relations among nations (Art. 1, pars. 1 and 2) and from the principles of the United Nations requiring members not to endanger international peace and security and to refrain in their international relations from threat or use of force (Art. 2, pars. 3 and 4).⁴

It is interesting to recall that the late Senator Borah drew a similar implication from the principle that resort to war was illegal. The resolution which he proposed in the Senate in 1923 for the "outlawry of war," and which led to the Kellogg-Briand Pact provided:

Every nation should be encouraged by solemn agreement or treaty to bind itself to indict and punish its own international war breeders or instigators and war profiteers under powers similar to those conferred upon our Congress under Article 1, Section 8, of our Federal Constitution, which clothes the Congress with the power to define and punish offenses against the law of nations.⁵

The United States, the United Kingdom, the Soviet Union, and France, in framing the Charter for the trial of major war criminals in August, 1945, assumed that the general anti-war obligations which bound the states involved in those trials prevented them from legitimatizing acts of individuals which were crimes against peace, and that these crimes included "preparation" of aggressive wars as well as "planning, initiating, or waging" them, and furthermore that "instigators" of these and other war crimes were criminally responsible no less than "leaders, organizers, and accomplices."⁶ The indictment which led to the Nuremberg trial cited participation as "instigators" in the development of aggressive war and other war crimes as a ground for liability, and as evidence of such liability referred to acts "preparing them (the German people) psychologically for

⁴ *U.N.W.B.*, Nov. 4, 1947, p. 580.

⁵ Sen. Res., 441, 67th Cong., 4th Sess., Feb. 1, 1923. See Comment in this JOURNAL, Vol. 19 (1925), p. 80.

⁶ Art. 6, Dept. of State, *Trial of War Criminals*, 1945, p. 16.

war" through reshaping their educational system and cultural activities, and controlling the dissemination of information and the expression of opinion.⁷

In the League of Nations the effort to achieve material disarmament led to consideration of "moral disarmament" as a necessary precondition.⁸ The Polish government's memorandum of September 17, 1931, which suggested suppression of war-stimulating propaganda and steps for assuring that educational and informational activities be inspired with mutual respect and good understanding between nations, was discussed in the Committee on Moral Disarmament of the Disarmament Conference in 1932, and in the International Committee on Intellectual Coöperation. The latter prepared a convention which required each party to prohibit broadcasts from its territory "which to the detriment of good international understanding is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory" of another party. The parties also undertook to "ensure" that broadcasts "shall not constitute an incitement either to war" against another party or "to acts likely to lead thereto." The convention included in addition the obligations to prevent broadcasts "likely to harm good international relations" of "statements the incorrectness of which is or ought to be known to persons responsible for the broadcast," and to ensure adequate broadcasts, "especially in time of crisis," of accurate information concerning international relations and of information tending to promote better mutual knowledge of civilizations and their contributions to the organization of peace. This convention was signed by 28 states on September 23, 1936, and came into force on April 2, 1938. Twenty-three states had ratified or acceded by January 1, 1941, including Great Britain, France, and fourteen other members of the United Nations. The Soviet Union was an original signatory but did not ratify. China and the United States neither signed nor acceded.⁹

In diplomatic discussions since the French Revolution governments have frequently complained of subversive propaganda stimulated or tolerated by foreign governments. Absolute monarchies and Fascist dictatorships have habitually assumed that states were under an international obligation to use due diligence to suppress such propaganda, even if emerging from private organizations; but liberal states, while recognizing the obligation to prevent high government officials from indulging in such propaganda,

⁷ Indictment, Secs. III, IV, D, e, and the same, pp. 25, 30.

⁸ Q. Wright, *A Study of War*, Chicago, 1942, p. 813; Denys P. Myers, *World Disarmament*, Boston, 1932, p. 8.

⁹ Manley O. Hudson, Ed., *International Legislation*, Vol. 7, p. 409; D. P. Myers, *Handbook of the League of Nations*, Boston, 1935, p. 187; League of Nations Secretariat, *Essential Facts about the League of Nations*, p. 107.

have usually denied any duty to prevent private individuals from engaging in such activities.¹⁰

Propaganda of this type, though only indirectly related to the maintenance of international peace, may be included under "war-mongering" and the convention of 1936 sought to prevent radio propaganda "incompatible with the internal order" of other states as well as such propaganda inciting to war or likely to lead thereto. These two types of propaganda should, however, be distinguished. Toleration by a state of propaganda unfavorable to foreign states, rulers, or governments and favorable to seditious, revolutionary, or insurgent groups has been considered an international delinquency on the ground that each state is bound to respect other states and not to interfere in their domestic problems. It has not been doubted that this duty exists and requires the government itself and high officers to refrain from libelous statements or propaganda which would weaken or disrupt the internal order of a friendly state. The extent to which reasoned criticisms of domestic or international policy come within this prohibition is controversial. Clearly denunciations of violations of international law or treaty by another state do not.¹¹ There has, as noted, been a definite issue between liberal and autocratic states, whether the duty extends to the prevention of such utterances by private persons within the state's jurisdiction.

Differing from the type of utterances just mentioned, propaganda which instigates or encourages aggression or other crime against international law has been considered a crime, not in itself, but because of its relationship to the international delinquency or crime which it incites. Where domestic order is concerned the question is that of whether the propaganda itself constitutes unlawful intervention. Where instigation of international delinquency or crime is concerned the question relates to the importance of the propaganda in producing the crime or delinquency.

The two types of propaganda are related because if foreign propaganda is likely to be or is successful in disrupting the internal order of a state the government of that state may be stimulated to engage in aggression to eliminate the source of hostile propaganda or it may be the victim of aggression because its weakness invites aggression by others especially by those governments or groups favorable to the revolutionists or insurgents. Both types of propaganda may, therefore, tend to produce international

¹⁰ H. Lauterpacht, "Revolutionary Activities of Private Persons against Foreign States," this JOURNAL, Vol. 22 (1928), pp. 105, 126; Lawrence Preuss, "International Responsibility for Hostile Propaganda against Foreign States," the same, Vol. 28 (1934), p. 649; Vernon Van Dyke, "The Responsibility of States for International Propaganda," the same, Vol. 34 (1940), pp. 58, 73 and "Autocratic Opposition to Freedom in Foreign States," *The Journal of Politics*, Vol. 4 (1942), p. 437.

¹¹ See Q. Wright, "Denunciation of Treaty Violators," in this JOURNAL, Vol. 32 (1938), p. 526.

war and can be properly characterized as "war-mongering," though the immediate effect in one case is to produce civil war and in the other international war.

Were it not for the indirect effect of propaganda directed at the domestic order of a state in producing international war, it would seem that the conduct or undue toleration of such propaganda by a state should be treated merely as an international delinquency, justifying diplomatic demands for preventive action or reparation by the injured state. In so far, however, as such propaganda provokes or encourages aggression or other international crime it becomes a crime itself.

In systems of municipal law the distinction is usually made between the civil liability for libel, slander, or defamation injurious to another individual, and the criminal liability for such acts which, because of their inflammatory, seditious, or blasphemous character, tend to produce breaches of the peace.¹² International law may similarly distinguish between the international delinquency of a state in conducting or unduly tolerating propaganda hostile to another state and the international crime of individuals who engage in propaganda with a tendency to produce breaches of international peace.

Turning from general principles and diplomatic discussions we may consider the extent to which national and international tribunals have actually recognized "war-mongering" as a crime against the law of nations. Both democratic and autocratic states have frequently provided in their law for the punishment of acts of propaganda having a definite tendency to incite war or having the character of criminal libel against a foreign sovereign or state. While this legislation has often been motivated by the desire to protect national interests rather than by recognition of an international obligation, it may give some evidence of the latter.

The penal codes of no less than 28 countries give some protection to foreign sovereigns and states against libel and slander. A larger number give similar protection to resident diplomats.¹³ The common law of England and the United States authorizes criminal prosecutions for libel against foreign rulers or states involving a threat to the peace.¹⁴ The penal codes of France, Spain, and a number of other states provide for punishment of individuals for acts which expose the state to a declaration of war or its citizens to reprisals. The Swiss code of 1934 provides for the suspension of "newspapers and periodicals which, exceeding the limits of criticism in a

¹² Francis Wharton, *A Treatise on Criminal Law*, Secs. 1594, 1605, 1606, 1611.

¹³ Van Dyke, pp. 69-70.

¹⁴ *King vs. Gordon*, 22 Howell State Trials 233-34; *King vs. Vint*, 27 Howell, 641; *King vs. Pelitter*, 28 Howell, 617-18; Case of William Cobbett, *Wharton State Trials* 325; Sec. of State Bayard to Mr. Harris, April 2, 1885, 2 Moore's *Digest* 430-33; J. F. Stephen, *Digest of Criminal Law*, Art. 99; Francis Wharton, work cited, Sec. 1612a. See, however, Lauterpacht, work cited, pp. 118-14.

particularly grave manner, threaten to disturb the good relations of Switzerland and other countries." The Soviet Union apparently has no criminal provisions against libel or slander of foreign states generally, but only prohibits counter-revolutionary activities against any "toilers' state," even if not a part of the Soviet Union.¹⁵

In the recent discussion Mr. Vishinsky stated that, in his opinion, "The instigation of war is a crime against humanity, and must not be masked by the cry that censorship is incompatible with human rights," but he did not discuss the present state of Soviet law on the subject. The Polish delegate, however, stated that "the criminal law of the Polish republic provides imprisonment up to five years for anyone who publicly incites to a war of aggression."¹⁶

National tribunals applying legislation or common law principles have held that libels against foreign sovereigns and states are incitements to war which constitute crimes against the law of nations.¹⁷ The Nuremberg Tribunal sentenced Julius Streicher to death for crimes against humanity, although he took no administrative or military part in such crimes. His acts of anti-Semitic propaganda were charged as "incitements to murder and extermination," and were considered to come within the crimes against humanity, including persecutions of minorities, defined in the Charter.¹⁸

There seems to be some evidence in general principles of law, diplomatic discussion, treaties, juristic opinion, national and international legislation, and judicial precedents that libelous and inflammatory utterances intended to incite, and tending to produce, aggressive war or other crime against the law of nations, and other acts short of direct planning or use of military force with the same intention and tendency, are crimes against international law which might well be designated "war-mongering." The present writer has suggested that "a crime against international law is an act committed with intent to violate a fundamental interest protected by international law, or with knowledge that the act will probably violate such an interest, and which may not be adequately punished by the exercise of the normal criminal jurisdiction of any state."¹⁹ It would appear that the material mentioned would bring "war-mongering" within this definition. Security from war is a fundamental interest of states protected by international law and national tribunals can not be trusted to penalize propaganda inimical to the security of other states when such propaganda corresponds to national policy.

Would provision for the legal punishment of that crime endanger free-

¹⁵ VanDyke, p. 71; Q. Wright, "The Outlawry of War," this JOURNAL, Vol. 19 (1925), p. 831.

¹⁶ U.N.W.B., Nov. 4, 1947, pp. 580, 582.

¹⁷ Above, notes 13, 14.

¹⁸ Judgment of Nuremberg Tribunal, this JOURNAL, Vol. 41 (1947), p. 56.

¹⁹ Q. Wright, "Law of the Nuremberg Trial," this JOURNAL, Vol. 41 (1947), p. 56.

dom of speech and of the press? It appears that if the crime is properly defined such prosecutions would come well within the exceptions to freedom of speech recognized even in the most liberal countries. The practice of the United States recognizes that the Constitutional guarantee in the First Amendment does not prevent civil actions and criminal prosecutions for utterances or publications which injure or seriously menace other individuals, the public order, or the international order. The American and most other systems of law impose liability for libel, slander, and defamation, and apply these laws for the benefit not only of resident individuals but also of foreign sovereigns and states. In the United States statutes may impose liability for publications or utterances injurious to public morals or public order in circumstances such that the publication or utterance constitutes "a clear and present danger."²⁰ Anti-syndicalist and anti-Communist laws have been up-held by the Supreme Court when applied within these limits.

The President's Committee on Civil Rights, in its report of October, 1947, thought freedom of speech and press would not be infringed by legislation or loyalty tests against subversive propaganda if the "clear and present danger" rule were applied with judgment, if the standard applied were clear, and if the procedure were adequate.²¹

The Commission on Freedom of the Press in 1947 noted that the First Amendment has not been interpreted to exempt the press from the general laws of the country, nor to prevent the adoption of special laws governing certain types of utterances. The Commission, however, thought certain laws against sedition and syndicalism were so vague and sweeping in phraseology as to endanger freedom of the press.²² It would appear that anti-war-mongering legislation would be Constitutional in the United States if within the "clear and present danger" rule.

The various bills of human rights which have been proposed in conformity with provisions of the United Nations Charter have uniformly recognized that freedom of expression must be subject to limitations of the kind recognized in the United States. Thus in the draft proposed by a committee of the American Law Institute, only "arbitrary limitations" of freedom of the press by the state are forbidden, and the exercise of this freedom, as well as others, is limited "by the rights of others and by the just requirements of the democratic state." The same limitations are included in the draft proposed by the Commission to Study the Organization of Peace. Proposals of the United Nations Commission on Human Rights

²⁰ Holmes, J., in *Schenck vs. U.S.*, 1919, 249 U.S. 47, 52, and dissent in *Abrams vs. U.S.*, 1919, 250 U.S. 627, 630.

²¹ President's Committee on Civil Rights, *To Secure These Rights*, Washington, 1947, pp. 49-51.

²² Report of Commission on Freedom of the Press, B. M. Hutchins, Chairman, *A Free and Responsible Press*, New York, 1947, pp. 16, 18.

made in June, 1947, recognized that "manifestations of differing convictions can be subject only to such limitations as are necessary to protect public order, morals, and the rights and freedoms of others" (Art. 20). Furthermore the general recognition of "freedom of expression" is qualified in this draft by the equally general recognition that "in the exercise of his rights, everyone is limited by the rights of others," and that "man owes duties to society" (Art. 2; 22). The United States' suggestions on the draft incorporates the same ideas (Art. 3, 22). The Declaration and Convention of Human Rights adopted by the United Nations Commission in December 1947 at Geneva omitted any formulation on freedom of expression, stating that the problem was deferred until after the meeting of the Conference on Freedom of Information planned for March, 1948, but the Declaration included a general limitation in the words, referred to above, used by the American Law Institutes' Committee (Art. 2).

A group of American newspaper publishers prepared a draft treaty for consideration by the International Conference on Freedom of Information planned for the Spring of 1948. The extensive freedoms proposed were, however, not to be construed "as modifying the laws of the high contracting parties concerning libel, slander, and publication of obscene materials," and "each of the high contracting parties may make and enforce regulations applicable to the correspondents of the other necessary for the maintenance of national security, provided such regulations apply equally to the correspondents of all nations."²³ A similar position is taken by James Warburg in proposing that an international agreement on freedom of information be accompanied by an agreement for preventing "psychological aggression." By the latter each government would agree that

Within the framework of its own constitutional relationships between citizen and state, it will endeavor to prevent or counteract the activities of any of its citizens which might tend in the direction of sustained psychological aggression against the government or people of another signatory nation.²⁴

If freedom of speech and the press is not unduly impaired by such qualifications it would not be unduly impaired by national or international enforcement of laws forbidding the publication or utterance of words or symbols designed and likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression, provided the phrase "likely to provoke or encourage" is interpreted in accord with the "clear and present danger" rule.

²³ R. J. Finnegan, ed., *Draft Treaty on Freedom of Information*, Chicago, 1947, Arts. 6, 7.

²⁴ James P. Warburg, *Unwritten Treaty*, New York, 1946, p. 158. This proposal goes hardly as far as the widely ratified Convention of 1936 (above, n. 9) though the latter dealt only with broadcasting.

It will be noted that the definition of the crime of "war-mongering" proposed in the preceding statement differs from the General Assembly's resolution mentioned in the beginning of this note, by substituting the word "and" for "or" after the word "designed." It is believed that the crime should require evidence both of intent to endanger and of actual danger to the peace. The General Assembly was not defining a crime, but merely condemning "war-mongering" which in this sense could appropriately include utterances either intended to produce or likely to result in breaches of the peace.

QUINCY WRIGHT

CURRENT NOTES

ANNUAL MEETING OF THE SOCIETY

The Annual Meeting of the American Society of International Law will be held in Washington on April 22, 23, 24. The general theme of the discussions will be the United Nations and International Law. It is confidently hoped that competent persons representative of the Government of the United States as well as of the United Nations organization will be among the speakers.

In accordance with the decision of the Executive Council of October 4, one session will be devoted to reports from the regional meetings being held this winter in several cities throughout the country.

Members are reminded of the notice of an amendment to the Constitution which was published in the October issue; this amendment will be voted on at the business meeting on April 24.

EDWARD DUMBAULD

Chairman, Committee on Annual Meeting

NEW YORK REGIONAL MEETING OF THE SOCIETY

Approximately seventy members were present at a luncheon which preceded the regional meeting of the Society in New York on November 8, 1947. Following the luncheon Professor Philip C. Jessup, as presiding officer, spoke a few words of welcome and then introduced the president of the Society, Professor Charles Cheney Hyde. Mr. Hyde greeted the members warmly and commented on the excellence of the attendance on a disagreeably rainy day.

The presiding officer explained the program as arranged by the committee in charge. Three speakers were to address the members for twenty minutes each. After each speaker there were to be twenty minutes for discussion. After the discussion following the third speaker there was to be time for discussion on any of the addresses, or on any pertinent subject.

Mr. Jessup introduced the first speaker, Professor William W. Bishop, Jr., of the University of Pennsylvania Law School. Mr. Bishop said that he had been asked to speak briefly on the progressive development of international law through recent American judicial decisions and on the plans of the *American Society of International Law* to develop the department in the *American Journal of International Law* for the fuller presentation to its readers of current judicial decisions, by means of digests and brief reviews. Mr. Bishop, as editor of the new department, asked the assistance of the members in bringing to his attention any cases on international law decided by American courts, foreign courts, and international tribunals. He hoped that the new department might serve a double purpose:

to assist practicing lawyers and to draw to the attention of the general reader the immediate interest to him, and the practicality in his daily life, of international law. He commented on the great importance of judicial decisions as source material in international law, and gave brief summaries of a considerable number of varied decisions emanating from American courts within the past year which were decided on the basis of international law.

Mr. Bishop said that however important it might be to the practicing lawyer to have access to similar cases arising in international tribunals and foreign courts, the sources are very limited. He suggested that in the field of publishing, digesting, indexing, and translating international law cases there might be a happy area of cooperation through the United Nations looking toward the progressive development of international law, and noted a recommendation to that effect by the UN Committee on the Progressive Development of International Law.

Mr. Wehle commented on the long interval between the publication of *Moore's Digest* and *Hackworth's Digest*, and asked whether current opinions and decisions might not be made available regularly through the Office of the Legal Adviser. He wondered whether the *American Journal* might not be the best place to publish this material.

Mr. Bishop replied that much of such material is already available in the Department of State Bulletin and that the Department has not a large enough staff to do more than it is doing.

Mr. Gross said that one of his first projects was the annual or more frequent publication of such opinions, so as to make generally available what is now available in a limited area.

Mr. Jessup then introduced the second speaker, Yuen-Li Liang, Director of the Division for Development and Codification of International Law of the UN Secretariat. He described the activities of the UN directed toward the progressive development of international law and its codification, beginning with the creation by the General Assembly in 1946 of the Committee on the Progressive Development of International Law and its Codification, which in turn recommended the setting up of a highly specialized body to be known as the International Law Commission. He reported at some length the discussion that had taken place concerning a distinction between the methods to be used for the codification of the law on the one hand and its development on the other; the selection of the personnel of the Commission; and finally the question of the formulation of the principles of international law recognized by the Charter of the Nuremberg Tribunal and its Judgment.

Mr. Jessup introduced the third speaker, Ernest A. Gross, Legal Adviser of the Department of State. He said that instead of presenting the paper which he had prepared he would mention some of the problems confronting him in his new post. First is the problem of relating international law

to the politico-military problems of today. The ten branches into which his Office is divided all overlap in their activities, thus making the task of coördination very difficult. He described illustrative situations and went on to say that this problem of overlapping and the need of complicated coördination is similar to the problem in the Department of State as a whole, for inseparable relationships appear among the economic, political, and military problems. He deplored a tendency in the Office to become over-absorbed in matters of domestic legislation which has an impact on foreign policy, and cited the Marshall plan as an example. He suggested that the relationship between the Office and this *Society*, the *American Bar Association*, and similar organizations was not close enough. He thinks the Office must feel free to try to mobilize the skills of all. He welcomes particularly the coöperation of this *Society*.

Mr. Eagleton asked how the Office is related to the UN and whether the Legal Adviser must approach UN officials through the Office of Special Political Affairs. Mr. Gross replied that the relation of his Office to the Legal Committee is direct, and that the Legal Adviser may communicate directly with Senator Austin and his staff. Otherwise the Office of the Legal Adviser and the Office of Special Political Affairs operate in tandem.

RUTH COOKE ROBERTS, *Secretary*

MIDWEST REGIONAL MEETING

The second Midwest regional meeting of the Society took place at the University of Chicago on December 6, 1947. Fifty members of the Society attended. Quincy Wright acted as chairman. The general topic discussed was the relation of the United Nations to International Law.

The morning session was devoted to the procedure of the United Nations for maintaining international law, including procedures for dealing with aggression, the relative importance of political and legal procedures, procedures for the development and codification of international law, and procedures for increasing the solidarity of the international community. Several of those present expressed the opinion that in a period of rapid change, such as the world is now experiencing, political procedures would be likely to prove more useful than legal procedures in many fields, such as the interpretation of the United Nations Charter. It was the prevailing sentiment, however, that international law would continue to have important functions and that greater use of international tribunals was desirable.

The afternoon session was devoted to a critical analysis of the principles of international law prescribed by the Charter, particularly those in Chapter II. It was recognized that the meaning of these principles would in considerable measure depend on the process of interpretation in reconciling such principles as "the sovereign equality of states" and "es-

sentially domestic jurisdiction'' with the broad competences given to the organs of the United Nations to preserve international peace and security and to promote economic and social welfare. The varied standards of interpretation which have been suggested for the Charter were compared with the standards applied to the League of Nations Covenant and the Constitution of the United States. Such comparisons indicated that the future may have a wide range of possibilities in store for the United Nations.

The meeting passed a single resolution suggesting the desirability of extending the invitation to future regional conferences to a limited number of qualified persons, especially members of the bar, who are not members of the society.

Q. W.

THE PRAGUE CONFERENCE OF THE INTERNATIONAL LAW ASSOCIATION

The forty-second Conference of the International Law Association was held at Prague, Czechoslovakia, from August 31st to September 6th, 1947. This was the second conference of this seventy-five year old institution since the cessation of hostilities in World War II. Upon the agenda the progressive development of international law and its codification occupied a position of major importance. Sir Arnold McNair presented the recommendation of an English committee of experts as to the best ways and means of accomplishing the results envisaged by Article 13, paragraph 1(a), of the Charter of the United Nations. The report of the committee followed in general the recommendations made by Sir Cecil Hurst in his address before the Grotius Society on October 16, 1946, but with a more specific application of the Restatement method. The presentation of the English group did not pass without opposition. A report by a Belgium-Luxemburg group presented by P. de Visscher and L. Gyselynck proposed to leave to the representatives of the various states and not to a committee of jurists, the selection of the subjects deemed ripe for codification. They maintained that the codification of international law was less a matter of mere esthetic perfection than of attaining the genuine approval of states and that for this reason political considerations could not be neglected. Their report favored the method of civil law countries in seeking the authority of codes bearing upon certain selected subjects and having the force of law rather than a mere compilation of accepted rules under the Restatement method. Professor Gutzwiller of Switzerland, in an able survey of the two methods, asks whether we must not recognize two different approaches to methods of codification, the Anglo-Saxon and the Continental European.¹

The resolutions finally adopted by the Association gave general approval

¹ M. Gutzwiller in *Die Friedens-Warte*, 1947, Nos. 4-5, p. 304.

to the report of the English group, while at the same time advising that the International Court of Justice should make recommendations for membership on the expert commission to the General Assembly; that the number of members should be less than fifteen; that the first and principal function of the commission should be to establish a number of expert committees consisting not of governmental representatives but of unofficial persons distinguished for their practical experience or scientific knowledge of international law and to charge these committees with the duty of preparing Restatements of these portions of the existing rules allotted to each of them without attempting to secure the approval of governments for these Restatements. The resolutions drew attention to the American Restatements and the Harvard Research in International Law as examples of the method recommended.

A second important topic dealt with by the Conference was the enforcement of human rights and fundamental freedoms as envisaged by the Charter of the United Nations. The Association adopted a resolution based upon a report by Professor Lauterpacht of Cambridge favoring further study of the various phases of the subject, not merely by the organs of the United Nations but also by non-governmental bodies, before final action by the General Assembly, but that such action should not be delayed beyond the year 1950. The resolution was transmitted to the Secretary-General of the United Nations.

The Conference also considered and acted upon the report of its Conflict of Laws Committee under the chairmanship of Judge Bagge of Sweden, relating to the unification of conflict rules in respect of the Sale of Goods. Several drafts have heretofore been presented to the Netherlands Government with the hope that they would be considered by the official Hague conferences on private international law. These drafts were laid before the official conference of 1928. The draft adopted by the Association at the Prague Conference will constitute a supplement dealing with the subject of jurisdiction in respect of litigation growing out of sales of movable corporeal goods. It permits the party to indicate the country of jurisdiction in the original contract, but in the absence of such indication, "competence shall be with the courts of the country where, at the time either when the contract is made, or when the claim is lodged, the defendant has his habitual residence or, if the order regarding the sale has been passed or received by an establishment of the defendant, where the establishment is situated."

The Association also considered a report of its Committee on Jurisdiction and Recognition in Divorce presented by William Latey. While space does not permit any detailed discussion of the draft adopted by the Association, it is sufficient to say that it does not contemplate the adoption of its provisions by multilateral convention. States are to undertake to insure by legislation that any decree of divorce *a vinculo*, and any decree

of nullity pronounced under the conditions required by the draft, may be recorded by a competent court of another adhering state, which shall thereupon issue a declaration that such decree has been pronounced by a court of the local state. The decree must have been pronounced by a competent court of the country in which the husband or wife was domiciled at the time the suit was instituted, or in which either party has been actually resident for an aggregate period of one year during the eighteen months immediately preceding the institution of the suit, or of which, according to the *lex fori*, either party was a national at the time the suit was instituted.

The International Law Association expects to celebrate its seventy-fifth anniversary at some time in 1948 in Brussels, Belgium, the city in which it was organized in 1873. In the present critical period of world history the peoples of the world might do well to observe the guiding precept of the Association: *Multis melior pax una triumphis*.

ARTHUR K. KUHN

STATUS OF DAIREN UNDER THE SINO-SOVIET AGREEMENT
OF AUGUST 14, 1945

On August 26, 1947, the Government of Soviet Russia, in response to a note of August 14 from the American Embassy at Moscow, again rejected a plea of the United States to reopen the port of Dairen, Manchuria, to international commerce or to be responsible for the treatment of American interests there.¹ The United States note had expressed the hope that arrangements could be made to reestablish the Chinese Administration, permitting American citizens to enter and depart therefrom as provided for under the Sino-Soviet Agreement of August 14, 1945, and served notice that the United States would hold the Soviet Government responsible for the treatment accorded meantime to American interests in the area. But the Soviet reply made clear that its control of Dairen would suffer no qualifications until the conclusion of a treaty of peace with Japan. Under the agreement of August 14, 1945, it asserted

Dalny [Dairen] during the existence of a state of war with Japan falls under the regime which has been set up in the naval base of Port Arthur. Inasmuch as the state of war with Japan is not terminated because there is as yet no peace treaty with Japan, naturally, the regime of the naval base continues to prevail over Dalny.

In the Soviet view the fact that civil administration of the Chinese Government "for reasons beyond Soviet control, has not as yet undertaken fulfillment of its functions" in Dairen, was an added motive for not changing the regime now existing at the Port.

This incident, the latest in the series of friction-producing episodes arising out of the Soviet Government's persistent refusal to reopen Dairen

¹ *The New York Times*, Sept. 3, 1947, p. 12.

to the commerce of other nations, calls attention to the unsatisfactory status of another trouble spot on the earth where the interests of the major powers are in conflict and which the Chinese Government is helpless to correct. A recently reported decision of that Government, after fruitless efforts to sway the Soviets, to "close" Dairen to all foreign shipping,² was immediately followed by a declaration on the part of the Official Russian News Agency (Tass) that Soviet ships retain "the indisputable right to enter Dairen, although this port, for reasons not depending on the Soviet Union, has not yet been opened to trading and shipping by all countries, as was established by the Soviet-Chinese Agreement on August 14, 1945."³ Earlier the United States Government, irritated by the increasing difficulties encountered by its representatives in attempting to exercise ordinary consular functions in Dairen,⁴ and the severe military restrictions upon entry and departure of ships into and from the Port, had protested to the Soviet Foreign Office against continuance of such abnormal conditions, emphasizing the desirability of implementing the pertinent provisions of the Soviet-Chinese Agreement of August 14, 1945, relative to reopening of Dairen to international commerce under Chinese Administration.⁵ In fact Dairen, completely under Soviet control and authority, has been a closed port since the defeat of Japan, serving only the interests of the Soviet Union.

The latest note attests that this unsatisfactory situation is likely to continue under the Dairen accord, a document which, while reasonably clear in intent, seems to have been drafted in terms designed to encourage disputes between the parties. An analysis of that agreement throws interesting light upon the legal basis of the Soviet claim to continue its exclusive control of Dairen at the present time.

The preamble thereto, which is of particular interest because it recites the basic purpose of the Dairen Agreement and attests its close integration with the Treaty of Friendship and Alliance concluded between China and the USSR of the same date, is thus drawn:

In view of a Treaty of Friendship and Alliance having been concluded between the Republic of China and the U.S.S.R. and of the

² Simultaneously with announcement of the Chinese decision the information director at Nanking disclosed that the Government was studying reports that Russian forces are supplying Chinese Communist forces through Dairen. *The New York Times*, August 21, 1947.

³ Same, August 29, 1947, p. 8.

⁴ The Department of State has not even been free to send official courier ships into the port without prior permission, for servicing the American Consulate, as necessitated by restrictions placed upon radio communication facilities by the Soviet authorities. Same, Sept. 3, 1947, p. 12.

⁵ *Department of State Press Release No. 8*, January 6, 1947. A similar note was dispatched to the Foreign Office at Nanking, urging that negotiations be initiated directly between the Chinese and Soviet Governments along the lines indicated in the text.

pledge by the latter that it will respect Chinese sovereignty in the control of all of Manchuria as an integral part of China; and with the object of ensuring that the U.S.S.R.'s interest in Dairen as a port of entry and exit for its goods shall be safeguarded . . . etc.⁶

There follows a series of undertakings by the Chinese Government.⁷ In paragraph 1 it agrees "to declare Dairen a free port open to the commerce and shipping of all nations," and in paragraph 2 (unimportant here) to apportion for lease to the USSR wharves and warehouses on the basis of separate agreement. Paragraph 3 states that "the administration in Dairen shall belong to China" and specifies how the harbor-master (who is to be a Russian national) and the deputy harbor-master shall be appointed. The most significant paragraph with which we are now concerned is paragraph 4. It provides as follows:

4. In peace time Dairen is not included in the sphere of the naval base regulations, determined by the agreement on Port Arthur, of August 14, 1945, and shall be subject to the military supervision or control established in this zone *only in case of war against Japan*.⁸

Use of the phrase "in case of war," rather than the more usual "during war" or "during a state of war" prompts several comments. On the bare language of paragraph 4, some uncertainty is suggested as to whether "in case of war" did not contemplate some war involving Japan at a future date (the agreement is to run for thirty years)⁹ as distinct from the one confronting the parties at the date of the agreement. The principal basis for any such doubt would be that the words "in peace time" which begin the paragraph can only refer to anticipated conditions of peace (in the future, viewed from the date of the instrument). This uncertainty, however, is only apparent. Two arguments virtually preclude reliance upon any construction of the words "in case of war" which would exclude the war then being waged against Japan. The first is that there is nothing in the agreement to suggest that it was not intended to apply to Dairen's status in the war then waged. The second is that the agreement must be construed with reference to the circumstances before

⁶ *Department of State Bulletin*, Vol. XIV, No. 345 (February 10, 1946), p. 205. Full texts of the Sino-Soviet agreements referred to in the present note are reproduced in this JOURNAL, Vol. 40 (1946), Supplement, pp. 51 ff.

⁷ In terms the Agreement constitutes an assumption of obligations solely by the Chinese Government; the Soviet Government does not expressly undertake to do anything. The point is mentioned at this time because inasmuch as the Chinese obligations are in the nature of a limitation upon vital rights of sovereignty (territorial dominion), there might be a possible ground for urging application of the canon of restrictive interpretation as an aid in resolving difficulties of construction due to ambiguity. The present note does not, however, invoke this approach in analyzing the legal effects of the agreement.

⁸ As cited. Italics supplied.

⁹ Paragraph 6.

the parties during its negotiation and conclusion. Full-scale hostilities were being conducted against Japan and the USSR had not yet entered the war. In the light of these facts the USSR could have been expected to contend (a) that paragraph 4 was applicable to the existing conflict as well as to any future war, and (b) that "in case of war" is synonymous with "in time of war." While such a contention (which, as noted above, is in fact the basis of the Soviet position) would not be altogether unreasonable as a matter of verbal construction, there must still be considered whether it is valid to dispose of the rights of the parties in a situation such as the present, between the definitive cessation of hostilities and the formal reinstatement of legal peace, in the light of all available evidence as to the intent of the agreement.

That issue may be approached by either of two alternative lines. On the one hand, it has already been noted that for the Soviets a prime condition precedent to the vesting of independent administration in China is the reestablishment of a legal "time of peace." But does the Dairen accord go that far? Or has the end of hostilities with Japan effected a return to peace within the meaning of the agreement so as to deprive the USSR of the right to exercise military control over Dairen? It is well settled in international jurisprudence that although active hostilities may have ceased, the state of war subsists in law until appropriately terminated, generally in a formal manner through the treaty of peace.¹⁰ The principle that cessation of hostilities or the surrender of one of the belligerents does not terminate a state of war has been repeatedly recognized in decisions of United States courts. Thus, in *Commercial Cable v. Burleson*, it was held that the armistice of November 11, 1918, had not affected the President's power to seize and operate certain cables under a joint resolution of the Congress authorizing such action during the "present war." Said the court (Learned Hand, J.):

Even if I were to assume that the power were only coextensive with a state of war, a state of war still existed. It is the treaty which terminates the war. . . . An armistice effects nothing but a suspension of hostilities; the war still continues. It is true that a war may end by the cessation of hostilities, or by subjugation; but that is not the normal course. . . . There were still military operations, the armistice had not been carried out, and after it was, armed forces of the United States were in occupation of enemy territory. . . .¹¹

¹⁰ *Ahmed Emin Bey v. Great Britain*, *Décisions des Tribunaux Arbitraux Mixtes*, Vol. 7, 1928, p. 920 at p. 922; G. Schwarzenberger, *International Law*, Vol. 1, p. 331; Fauchille, *Traité de droit international*, Vol. 2, § 1693; L. Oppenheim, *International Law*, Vol. II, 6th ed., rev., pp. 434, 464; and generally, Hudson in 39 *Harvard Law Review* (1925), pp. 1029 ff.

¹¹ Dist. Ct., S.D. N.Y., 255 Fed. 99, 104. *Accord: Industrial Commission of Ohio v. Rotar* (1931), 124 Ohio St. 418; *Hijo v. U.S.*, 194 U.S. 315, 323; *Hamilton v. Kentucky Distilleries*, 251 U.S. 148, 167; *Ex Parte Sichofsky*, 273 Fed. 694, 695-696. See Hackworth, *Digest of International Law*, Vol. VI, pp. 428 ff., and generally,

If the foregoing considerations have merit, will there not be an inducement to the USSR to defer conclusion of a treaty of peace with Japan as long as possible, while maintaining that as "peace" is not restored, Soviet authority over Dairen may not be challenged? Conceivably it might seek to pursue this contention long after other nations had concluded peace treaties with Japan, arguing that as Russia was not party thereto, it still retained its rights in Dairen. Apart from exposing the Soviets to charges of bad faith, such a policy would not necessarily prevent reestablishment of peace within the meaning of international law at some ultimate date, even if no peace treaties were ever concluded. For while the normal method of terminating a war is by treaty, cessation of hostilities and the withdrawal of military forces from the hostile territory, when followed by a sufficient lapse of time, may be regarded as marking a termination of the war.¹² In a communication to the Spanish Minister, Secretary of State Seward declared:

It is certain that a condition of war can be raised without an authoritative declaration of war, and, on the other hand, the situation of peace may be restored by the long suspension of hostilities without a treaty of peace being made. History is full of such occurrences. What period of suspension of war is necessary to justify the presumption of the restoration of peace has never yet been settled, and must in every case be determined with reference to collateral facts and circumstances.¹³

On the other hand, despite the not implausible grounds invoked by the USSR, it is believed that continued exclusion of Chinese authority under the circumstances now prevailing is contrary not only to the spirit of the Dairen agreement when read in conjunction with the other Sino-Soviet accords simultaneously concluded, but also to the fundamental purpose of those agreements, and to that extent constitutes both an infringement of Chinese sovereignty and a violation of the principle that Dairen shall be an open port. What were the objectives which the parties sought to achieve?

By their Treaty of Friendship and Alliance they undertook "to wage war against Japan until final victory is won," and "to render to one

Hudson, work cited, who points out that the precise moment at which a state of war ends within the meaning of a given statute may vary for different purposes.

A similar attitude has been taken by the Department of State. See Mr. Bayard to Mr. Muruaga, Dec. 8, 1886, Moore, *Digest of International Law*, Vol. VII, p. 837. President Truman's Proclamation of December 31, 1946, expressly recognized that a state of war still existed at that time. *Department of State Press Release*, "Cessation of Hostilities in World War II," Dec. 31, 1946.

¹² Hyde, *International Law*, 2nd ed., Vol. III, § 904; Oppenheim, work cited, p. 464.

¹³ Moore, work cited, p. 336. See also Phillipson, *The Termination of War and Treaties of Peace*, p. 5; and for examples of wars terminated in this way: Fauchille, work cited, § 1693; Phillipson, work cited, pp. 3 ff.

another all necessary military and other assistance and support in the war" (Art. I); "after the termination of the war against Japan to take jointly all measures in their power to render impossible a repetition of aggression and violation of the peace by Japan," and in the event of a Japanese attack against either party which involves it in hostilities to give all military and other assistance to the party so involved (Art. III); and

having regard to the interests of the security and economic development of each of them . . . to work together in close and friendly collaboration after the coming of peace and to act according to the principles of mutual respect for their sovereignty and territorial integrity and of non-interference in the internal affairs of the other contracting party. (Art. V.)

The preamble of this treaty expressed the desire to strengthen "the friendly relations that have always existed between China and the U.S.S.R. through an alliance and good-neighborly post-war collaboration."¹⁴ In Article I of the "Agreement on Port Arthur" which the parties declare (in the preamble thereof) to be for implementation of the Treaty of Friendship and Alliance referred to above, China agrees to the joint use by the USSR and itself of Port Arthur as a naval base "with a view to strengthening the security of China and the U.S.S.R. against further aggression by Japan." Port Arthur as an exclusive naval base is to be used only by Chinese and Soviet military and commercial vessels (Art. III); and defense of the naval base is entrusted to the Soviet Government (Art. IV). Finally, as already noted, the Dairen agreement was concluded in view of the "Treaty of Friendship and Alliance"; of the pledge by the USSR that "it will respect Chinese sovereignty in the control of all Manchuria as an integral part of China"; and to ensure that "the U.S.S.R.'s interest in Dairen as a port of entry and exit for its goods shall be safeguarded."

From these agreements may be extracted the following principal aims:

1. Effective prosecution of military operations against Japan in the conflict then being waged, as well as strengthening the security of China and the USSR in the event of future aggression. The primary objective here, in short, is military security.
2. Protection of the USSR's interest in Dairen as a conduit for its foreign trade, an economic objective equally valid in war and peace.
3. Mutual respect for the sovereignty and territorial integrity of each of the parties and friendly post-war good-neighborly collaboration.
4. The creation of Dairen as a free port open to all nations.

Considering the general circumstances now prevailing, the reduction of Japan's military potential and the disappearance of any reasonable possibility that Japan might renew hostilities, the objectives of "1" and "2" would certainly not be impaired by the relinquishment of Soviet military rule. So far as the spirit and purpose of these agreements are concerned,

¹⁴ *Department of State Bulletin*, Vol. XIV, No. 345 (Feb. 10, 1946), p. 203.

the present factual situation would seem to be precisely that contemplated as warranting a resumption of Chinese control. Surely restoration of that control would not be inconsistent with the Dairen agreement. On the other hand, continued Soviet authority is no longer necessary for the purposes of the agreement, inasmuch as those purposes are directly related to reasons of military security and the conduct of operations against Japan. The sole justification for the security provision of paragraph 4 thereof would appear to be to complete the system of protection instituted for the safeguard of Port Arthur. As this reason for extending the system to Dairen has passed, continued military control by the USSR would appear to contravene those provisions of the agreement relative to Chinese sovereignty and the establishment of Dairen as a free port. To that degree the rights of all nations in the free port are invaded by action which is no longer in the interest of both parties but which, on the contrary, is prejudicial to the territorial integrity of one of them, and which, if persisted in, might properly be regarded as unfriendly in character.

To summarize, only by attributing to the words "in case of war" in the Dairen agreement the expanded scope of "in time of war" is there any support at all as a matter of formal legal construction for the Soviet position which seems fragile when account is taken of the intention of the parties and the present factual situation. At any rate the Soviet refusal to be responsible for what happens to American property, while preventing the United States from exercising that protection itself, is but another bald repudiation of the principles of international law and order which have already suffered so greatly at the hands of the Russian leaders.¹⁵ In a world groping desperately to reestablish the conditions for economic stability and peace the case stands as a further illustration of the current Soviet unwillingness to comply in good faith with the spirit of any international transaction which would serve world harmony as a whole rather than the selfish, not so ulterior, political designs of the USSR.

ALWYN V. FREEMAN *

THE FAR EASTERN COMMISSION AND ITS RECENT DEVELOPMENTS¹

Of the numerous international agencies which have come into being as a result of the Second World War, the Far Eastern Commission notwithstanding its important responsibility of formulating the principles and policies for the occupation of Japan, has led a comparatively quiet and ob-

¹⁵ There is some intimation in the Soviet note of August 26 that, even were a peace treaty to be concluded with Japan, re-opening of the port would not thereupon follow immediately, for the note refers to the Chinese Government's failure to undertake fulfillment of its functions at Dairen.

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¹ This article represents only the personal opinion of the author and does not necessarily reflect the views of any governmental agencies or public institutions with which he has been associated.

secure existence; its activities have never enjoyed the publicity accorded by the press to other multi-partite organizations. Meeting on the premise of the former Japanese Embassy in Washington, the Commission has been in continuous secret session since its early inception in February, 1946 and has adopted a considerable number of policy decisions among which probably the most important is the lengthy document entitled "Basic Post-Surrender Policy for Japan" which, it is expected, will continue to be effective until such time as the treaty of peace comes into force.

The Commission owes its establishment to a decision of the Moscow meeting of the Council of Foreign Ministers in December, 1945 which issued a communique on December 27 of that year² outlining its Terms of Reference.³ Subsequent to the surrender of Japan, it will be recalled, the subject of allied rule in Japan was brought up in conjunction with the London session of the Council of Foreign Ministers in the autumn of 1945.⁴ Shortly afterwards a Far Eastern Advisory Commission was organized and met regularly in Washington in November and December of 1945 with a view to formulating policies for the implementation of the instrument of surrender. The Governments of Australia, Canada, China, France, the Netherlands, New Zealand, the Philippines, the United Kingdom, and the United States took part in the work of the Advisory Commission. According to announcement of the Department of State India accepted the invitation to attend.⁵ The USSR declined the invitation to participate on account of its purely advisory character.^{5a} As a matter of fact, as is now known, the United Kingdom and Australia, though willing to coöperate, were nonetheless dissatisfied with its purely advisory role.⁶ These differences were finally resolved by the Moscow agreement under which the Advisory Commission was replaced by a Far Eastern Commission with headquarters in Washington and a membership including the nine Powers who participated in the Advisory Commission as well as representatives of USSR and India.⁷

² *Department of State Bulletin*, Vol. XIII, No. 340, pp. 1028-1029.

³ "Activities of the Far Eastern Commission, Report by the Secretary General," *Department of State Publication* 2888, Appendix 2, pp. 36-39; cited hereafter as *Report*.

⁴ James F. Byrnes: *Speaking Frankly*, pp. 213-215.

⁵ Department of State, *Press Release* No. 812, October 29, 1945.

^{5a} *Report*, p. 2.

⁶ Byrnes, pp. 217-218. It is interesting to note Mr. Byrnes' statements that the USSR was originally opposed to including India in the membership of the Commission and that the British Government requested the inclusion of Australia on the Allied Council for Japan.

⁷ *Report*, p. 2, in which is stated that the Far Eastern Advisory Commission "was composed of representatives of Australia, Canada, China, France, the Netherlands, New Zealand, the Philippines, the United Kingdom, and the United States" and that "the Far Eastern Commission came into being, consisting of representatives of those powers which had been members of the Advisory Commission and a Soviet representative." Thus no reference is made to India's participation, although the names of India's representatives are listed in the chapter on "Organization of the Commission" and in the roster of the present Far Eastern Commission personnel.

At the same time an Allied Council for Japan was established in Tokyo in which are included representatives of China, USA, and the USSR and a member representing jointly the UK, Australia, New Zealand, and India.⁸ This Council, though not organically part of the Far Eastern Commission, is closely associated with it. As an organ of liaison between the allied nations and the Supreme Commander the Council is essentially a consultative and advisory body without executive power.

As provided in the terms of reference, the functions of the Far Eastern Commission include the following:

1. To formulate the policies, principles, and standards in conformity with which the fulfillment by Japan of its obligations under the terms of surrender may be accomplished;

2. To review, on the request of any member, any directive issued to the Supreme Commander for the Allied Powers or any action taken by the Supreme Commander involving policy decisions within the jurisdiction of the Commission;

3. To consider such other matters as may be assigned to it by agreement among the participating Governments reached in accordance with the voting procedure . . . [of the Commission].⁹

Two subjects which are specifically excluded from the jurisdiction of the Commission include the conduct of military operations in Japan and the question of eventual territorial adjustments. Underlying the structure of control of Japan is the recognition of the existence in Tokyo of a Supreme Commander who has been acting as the sole executive authority for the occupation. Decisions reached by the Commission therefore are transmitted to the United States Government which in turn passes them on in the form of directives to the Supreme Commander for guidance.

As regards the voting procedure of the Commission, action is taken by a simple majority vote which must include the concurrence of the representatives of the United States, United Kingdom, USSR, and China.¹⁰ During the past two years of existence of the Commission, there was no known instance in which this so-called right of veto was ever exercised by any one of the four Powers possessing it. This fact seems to indicate there has been a wide area of agreement among the participating governments regarding certain phases of the policies for the control of Japan.

In the performance of its functions the Commission has established a number of committees. They include a Steering Committee and seven working committees,¹¹ the former being responsible for organizing the Commission's activities and coordinating the business of the working committees. Recommendations of the working committees are normally brought before the Steering Committee for discussion prior to transmission to the

⁸ *Report*, p. 4.

⁹ *Report*, Appendix 2.

¹⁰ *Report*, Appendix 2.

¹¹ *Report*, Appendix 3, Roster of present Far Eastern Personnel.

Commission for adoption, in order that disagreement between members if it exists might thus be reconciled. The six functional committees deal with such subjects as: (1) Japanese reparations and restitution of looted property; (2) economic and financial affairs; (3) constitutional and legal reform; (4) strengthening of democratic tendencies; (5) war criminals; (6) aliens in Japan; and (7) the question of disarmament. In all these committees, as in the Commission, technical and administrative services are rendered by a Secretariat which is financed and organized by the United States Government acting as host to the Commission.

In the past twenty-two months, down to the middle of December, 1947, the Commission held some eighty meetings and adopted over forty policy decisions on a wide variety of subjects. Of the most far-reaching significance is the formulation of the "Basic Post-Surrender Policy for Japan,"¹² which was approved by the Commission on June 19, 1947. Based as it is on the Potsdam Declaration, this statement declares that the ultimate objectives of the Commission's work are to insure that Japan shall not again become a menace to the peace and security of the world and to bring about the earliest possible establishment of a democratic and peaceful government which shall carry out its international responsibilities, respect the rights of other states, and support the objectives of the United Nations.

In broad outline, this post-surrender policy covers the major aspects of the control of Japan. It begins with a reiteration of the principle enunciated at the time of the surrender that the authority of the Emperor and the Japanese Government should be subject to the Supreme Commander who, however, is not committed to support the Emperor or any other Japanese governmental authority. Whereas the Supreme Commander may after consultation with the Allied Council for Japan remove any individual minister of the Japanese Government, changes in the governmental machinery or a change in the Japanese Government as a whole must be approved by the Far Eastern Commission. Disarmament and demilitarization are to be carried out promptly and with determination. Japan is not to have any army, navy, airforce, secret police organization, or any civil aviation or gendarmerie, but may have adequate civilian police forces. Military and naval installations and naval vessels and war equipment are to be surrendered and be disposed of in accordance with the decisions of the Allied Powers. In the field of political reform, militarists and ultranationalists are to be excluded from public office, war criminals are to be tried and punished; and individual liberty and democratic processes are to be encouraged. In the realm of economics a program of economic demilitarization was devised which includes the immediate cessation and future prohibition of the production of all implements of war; the institution of a system of inspection and control to prevent disguised military preparations; the elimination of industries which may provide Japan with

¹² *Report*, Appendix 5, pp. 49-58.

a war potential; and the prohibition of certain research having to do with Japan's war-making power. Organization of labor in industry and agriculture along democratic lines and resumption of peaceful economic activities are to be encouraged. While eventual Japanese participation in world trade relations is anticipated it was emphasized that reparation must be exacted from Japan through the transfer of such existing Japanese capital equipment and facilities or such Japanese goods as may in the future be produced. The shares of the particular countries in the total sum of the reparations from Japan are to be determined by two factors: (1) the scale of material and human destruction and damage suffered by each claimant country as a result of Japan's aggression; and (2) the relative contribution which each country made to the defeat of Japan, including the extent and duration of resistance to Japanese aggression.

With respect to political reforms in Japan, the Commission was concerned in the spring of 1946 with the question as to whether the time scheduled for the general election for the first post-surrender House of Representatives of the Japanese Diet was propitious for the emergence of genuine liberal political elements. A message of consultation was forthwith communicated to the Supreme Commander who replied that "the new Diet will be the most truly responsive body to the will of the people that has ever served Japan and will provide the basis for a much more representative cabinet."¹³ When the issue of postponement of the election was finally put to a vote, the Commission decided by majority that "no action was necessary.

By experts on Japanese affairs it has long been agreed that the Meiji Constitution served as an instrument by which the militaristic and ultra-nationalistic elements seized political power and plunged the country into an adventure of aggressive expansion. When the draft revision of the Meiji document was released by the Japanese Government purportedly with the personal endorsement of General MacArthur, the Commission therefore considered it to be a matter of deep concern to itself and approved on March 20, 1946 a policy decision stressing, among other things, the demand that the Commission "should be given an opportunity to pass upon the final draft of the Constitution to determine whether it is consistent with the Potsdam Declaration, and any other controlling document before it is finally approved by the Diet and becomes legally valid."¹⁴

In a series of decisions¹⁵ designed to promote democratic institutions in Japan were enunciated the important principles that sovereignty should

¹³ *Report*, Appendixes 6 and 7, pp. 58-63.

¹⁴ *Report*, Appendix 8. Regarding the origin of the new Constitution, Harold S. Quigley seems to agree with D. N. Rowe that the draft of March 6, 1946, "was entirely the work of the Government Section of Seap"; see Quigley's article entitled "Japan's Constitutions: 1890 and 1947, in *The American Political Science Review*, October, 1947, p. 874, footnote 12.

¹⁵ *Report*, Appendixes 9, 10 and 11.

reside not, as in the past, in the Emperor but in the people; that a genuine representative government should be based upon universal adult suffrage; and that the executive power must be made subordinate to the legislature. The Japanese people, the Commission declared, must be encouraged to abolish the institution of the Emperor or to reform it along more democratic lines. The retention of the Privy Council and the House of Peers in their present form was considered undesirable. Finally, prior to the adoption of the Constitution by the Diet on November 3, 1946, the Commission, with a view to insuring that the organic law of the Japanese state should in reality represent the freely expressed will of the Japanese people, decided on October 17, 1946, that a constitutional review should be undertaken by the Commission not sooner than one year after the document went into effect on May 3, 1947 and not later than two years.¹⁶

With respect to the question of reparations the Potsdam Declaration already laid down the principle that "just reparations in kind" should be exacted from Japan by countries which have been victims of her aggression. In pursuance of this declaration, the Commission passed a series of decisions determining (1) what constitute "just reparations," (2) how much of Japanese industrial machine should be made available for reparations claims; and (3) how reparations are to be apportioned among the various claimant countries.¹⁷

With respect to the first, it has been set forth in two policy decisions that, in the selection of industrial removals, consideration should be given to the legitimate needs of Japan's peace-time economy on the one hand, and to the dissolution of the Saibatsu industrial and financial monopolies, on the other.¹⁸ With respect to the second the Commission, by a series of policy decisions comprising a program of so-called "interim reparation removals," has designated as appropriate items for reparations claims such industrial facilities generally considered basic to Japanese war economy as army and naval arsenals, aircraft establishments, and light metal plants; machine tools, sulphuric-acid, and ship-building industries; ball- and roller-bearing plants; iron and steel, thermal electric power, and soda ash, chlorine, and caustic soda industries; synthetic oil and synthetic rubber industries.¹⁹ The question of determining various percentage shares of reparation goods presents a difficult issue. Although the criteria for such determination have been set forth in the Post-Surrender Policy, no agreement it is understood has yet been reached among the members of the Commission regarding specific shares.

Closely associated with the problem of reparation is the question of looted property on which the Commission adopted on July 18, 1946, a deci-

¹⁶ *Report*, Appendix 12.

¹⁷ *Report*, p. 16.

¹⁸ *Report*, Appendices 24 and 23.

¹⁹ *Report*, Appendices 14-20.

sion requiring the restitution and return to the original owners by the Japanese Government of all such property which are identifiable.²⁰

From the standpoint of long-range control of Japan, a question of primary importance is that of determining the peaceful needs and defining the industrial level of Japan. A policy decision covering the subject was approved by the Commission on January 23, 1947, establishing the principle that "the peaceful needs of the Japanese people should be defined as being substantially the standard of living prevailing in Japan during the period 1930-1934."²¹

Although the specific level for any particular industry remains yet to be determined, the adoption of this principle is of special significance inasmuch as these years represented for Japan in reality the formative period of war preparation during which the ruling groups and the monopolists succeeded in transforming their country into a gigantic industrial power in a drive for empire. The following words of an American specialist on Japan may have certain cogency in a critical examination of this question:

The rapid growth of a heavy industry geared to munition production was the simplest feature of Japan's economic development in the thirties. Throughout the decade preceding the Pacific war, light industry played a declining role in Japan's production. The depression of 1929-32 marked the watershed. Measured by value of output the textile industry alone still surpassed heavy industry in 1931. Out of the total industrial production valued at ¥5,178,130,000 in that year, the textiles industries accounted for 37.2 percent. The metallic, machine and tool, and chemical industries took 33.7 percent. Thereafter, with Japan's assumption of new imperial responsibilities in "Manchoukuo" and with the beginning of efforts to re-equip the armed forces in preparation for further aggression, the growth of the heavy industries was accelerated. By 1935 total industrial production had risen to ¥10,836,890,000. Of this amount, however, the same heavy industries took 47.2 percent, while textile took only 30.9 percent. The absolute increase for the heavy industries, from ¥1,745,990,000 in 1931 to ¥5,158,140,000 in 1935, or nearly 200 percent, was the striking aspect of these figures. . . .²²

In this brief resumé of the activities of the Commission, it is unnecessary to go further into the details of its decisions on matters of a comparatively minor character. Suffice it to say that the Far Eastern Commission, constituting as it does a convenient channel and even a potent force for the formulation of Allied policy and joint action toward Japan, represents nevertheless a compromise and a careful balance between two divergent views—the one tending to ascribe to the controlling authorities the role of

²⁰ Report, Appendices 28-29.

²¹ Report, Appendix 80.

²² T. A. Bisson: *Japan's War Economy*, pp. 198-99. These statistics were compiled by the Commerce and Industry Ministry, as cited in *China Incident and Japan*, China Incident Series, No. 3, Tokyo, 1937.

absolute and unhampered leadership for the sake of efficient action while the other favoring a greater degree of joint coöperation among the principal Allies who have contributed their due shares to the defeat of the enemy. The establishment of the procedure requiring the transmission of policy decisions of the Commission indirectly to the Supreme Commander for implementation and execution and the device of issuing "interim directives" in response to urgent situations are calculated to "protect General MacArthur from undue interference."²³ The recognition of the so-called veto rights of the four major Powers, on the other hand, is intended to safeguard the interests of the principal Pacific countries having admittedly important stakes in any disposal of the Japanese menace.

All in all, it may perhaps be said that the structure of the Far Eastern Commission is in the last analysis not the most typical of international agencies designed for unreserved coöperation and collaboration.

Throughout its existence during the past twenty some months, however, the Commission has delved into a multitude of problems and has mustered a great deal of useful information which will surely prove to be of great value to the forthcoming peace conference in an attempt to write a treaty of peace with Japan.

POELIU DAI

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TRANSITION FROM CITEJA TO THE LEGAL COMMITTEE OF ICAO

The *Comité International Technique d'Experts Juridiques Aériens* (CITEJA) was created pursuant to a recommendation adopted at the First International Conference on Private Air Law, held at Paris in 1925, to develop a code of private international air law through the preparation of draft international conventions for final adoption at periodic international conferences on private air law.

The sessions of the CITEJA were suspended on the outbreak of war and in 1944 the Chicago Conference on International Civil Aviation recommended that these sessions be resumed as soon as possible and that consideration be given to the desirability of coördinating the activities of the CITEJA with those of the Provisional International Civil Aviation Organization (PICAO) and, after it had come into existence, of the permanent International Civil Aviation Organization (ICAO) to be established pursuant to the Convention on International Civil Aviation signed at Chicago on December 7, 1944.

The First Interim Assembly of PICAO, on June 8, 1946, adopted a resolution in which it was envisaged in fact that, in setting up the Permanent Organization (ICAO), provision should be made for the establishment, on

²³ Byrnes, p. 218.

the authority of the Assembly, of a Permanent Committee on International Air Law, as part of the Permanent Organization and responsible to the Council. It was apparent that, upon the organization of the new Committee, the CITEJA would cease to exist, as a consequence of the terms of the resolution.

On June 24, 1946, the Interim Council decided to establish a Special Legal Committee in order, in addition to other legal matters, "to study and report on the treatment of legal problems in the permanent Organization, with particular reference to the recommendation of the Assembly that there be established a permanent Legal Committee upon which each Member State would have the right to be represented."

On October 21, 1946, the Interim Council directed its Special Legal Committee "to prepare recommendations on the status and character of the Committee on International Air Law and the measures which have to be taken by the Council or the Assembly in preparation of its establishment." It was stated that, "in preparing its recommendations, the Legal Committee take full account of the discussions by the CITEJA at its Cairo meeting and of any recommendations the CITEJA may wish to make thereon."

This latter Resolution of the Interim Council was communicated to the CITEJA which, after detailed discussions at its Cairo Session in November, 1946, endorsed various recommendations and decisions on the continuation of the work of codification on Private International Air Law by ICAO. The CITEJA requested that the Governments of its Member States authorize the Secretary General to put CITEJA files and archives at the disposal of the proposed Committee on International Air Law.

The CITEJA further requested its Secretary General to send to ICAO, without waiting for the general transfer of the CITEJA archives to the Committee on International Air Law, a copy of the reports already prepared on questions under study and discussion in order to ensure the continuity of the work.

The Interim Council, by a Resolution adopted on February 4, 1947, as amended on March 18, 1947, agreed to recommend to the First Assembly of ICAO that a Committee on International Air Law be established in ICAO by a Resolution of the Assembly.

Meanwhile ICAO, the permanent Organization came into being on April 4, 1947, and subsequently the establishment of a Committee on International Air Law within the Organization, to be designated as the "Legal Committee," was approved by the First Assembly of ICAO on May 23, 1947. The constitution of the Legal Committee was approved by this Assembly.

The CITEJA, anticipating the establishment of the new Legal Committee, held its final meeting in May, 1947, at Montreal and adopted resolutions for its liquidation.

The Legal Committee of ICAO held its First Meeting at Brussels from September 10 to 25, 1947, at which it approved its rules of procedure, prepared its future work program, and approved a final text of the draft Convention on the international recognition of rights in aircraft which will be submitted to the Second Assembly of ICAO for consideration and adoption and signature if agreement can be reached.*

R. A. DRAPER

ICAO, Montreal

AGREEMENT TO RESOLVE CONFLICTING CLAIMS TO GERMAN
ENEMY ASSETS OUTSIDE GERMANY

Canada, the Netherlands and the United States signed an Agreement Relating to the Resolution of Conflicting Claims to German Enemy Assets in Brussels on December 5, 1947. Belgium signed the Agreement on January 5, 1948. This is the first multilateral agreement to be completed dealing with practically all types of conflicting claims to German enemy assets located in countries members of the Inter-Allied Reparation Agency. The Agreement disposes of conflicts relating to property owned directly by German enemies as well as conflicts relating to property in one Allied¹ country owned by German enemies through enterprises organized under the laws of another Allied country or under the laws of Germany.

The Agreement is open for signature by the other fourteen countries² members of the Inter-Allied Reparation Agency. It cannot become binding upon the United States until it is approved by Congress.

When the Allied countries during World War II, or immediately after liberation, seized German enemy assets within their jurisdiction they soon found that more than one of them were laying claim to the same assets. For example, an Allied country would vest on the books of a corporation a German-owned security issued by a corporation organized in its territory even though the certificate was physically located in another Allied country and had been seized or was about to be seized by that other country. In this typical case both countries would claim the same security and, if the pattern of the years following World War I were repeated, the countries would have recourse to long-drawn-out diplomatic representations or rely on the courts to resolve their conflicting claims.

In order that a study might be made of the means to avoid the friction resulting from such conflicting claims and to expedite the liquidation of German enemy assets within the jurisdiction of its Member States, the Inter-Allied Reparation Agency (IARA) appointed the members of the

* See Stephen Latchford, "CITEJA and the Legal Committee of ICAO," in *Department of State Bulletin*, Vol. XVII, No. 428 (September 14, 1947, p. 487).

¹ The word "Allied" is used in this Note to refer in general to countries which are parties to the agreement.

² The other fourteen countries are Albania, Australia, Czechoslovakia, Denmark, Egypt, France, Greece, India, Luxembourg, New Zealand, Norway, the Union of South Africa, the United Kingdom and Yugoslavia.

Committee of Experts on enemy property custodianship which had been provided for under Part I, Article 6F, of the Paris Reparation Agreement of January 24, 1946. This Committee met in June, 1946, and analyzed the various types of conflicting claims facing Member States of IARA. As the result of this analysis further meetings were held in the German External Assets Committee, which consisted of Delegates to IARA from Belgium, Canada, France, the Netherlands, the United Kingdom, the United States, and Yugoslavia. These meetings took place from November to December, 1946, from February to March, 1947 and from September to November, 1947.

The Agreement signed by Belgium, Canada, the Netherlands, and the United States is the outcome of these discussions at IARA and represents a carefully balanced arrangement which gives reasonable consideration to the diverse interests involved.

The Agreement consists of a covering document with eight articles and an Annex in six Parts. Part I of the Annex resolves the problem posed above with respect to securities by providing that the Allied country in whose territory the certificate is located will release the certificate to the country in whose territory it was issued. Similarly, German-owned currency issued by one Allied country, but located in another Allied country goes to the country of issue. Negotiable instruments are released to the country of residence of the principal obligor. A bill of lading or a warehouse receipt is released to the country where the property involved is located. A foreign currency account maintained in one Allied country by a bank located in another Allied country for the benefit of a German customer will be divided equally between the allied countries concerned.

Pursuant to the provisions of Part II of the Annex, in the case of property within one Allied country which forms part of the estate of a non-enemy person who had died domiciled in the territory of another Allied country, when there is a German enemy interest in the estate, the property will be released by the former Allied country to facilitate the normal administration of the estate in the latter Allied country. Similarly, in the case of property in one Allied country held under a trust being administered under the laws of another Allied country, when there is a German enemy interest in the trust, the property will also be released by the former Allied country. It should be noted, however, that real estate forming part of an estate, contrary to the above rule as to estates, is not released by the country where it is located.

The typical case covered by Part III of the Annex relates to property located in one Allied country belonging to a corporation organized under the laws of another Allied country, in which corporation there is a German interest. As an example, suppose there is \$100,000 in the United States owned by Corporation X organized in the Netherlands and the shareholders of Corporation X are German citizens to the extent of 60 percent of the

shares and Canadian citizens for the remaining 40 percent of the shares. In this situation the following conflicting claims may exist:

1. The U. S. Custodian may claim the whole \$100,000 as belonging to a corporation which is German controlled or in which there exists a substantial German interest.

2. The Dutch Custodian may claim that Corporation X is a Dutch national, that the \$100,000 is Dutch property, and that the U. S. should release the \$100,000 to the corporation. The Dutch Custodian will vest or has already vested the German shares in the corporation, and if the United States should release the \$100,000, the Dutch Custodian will benefit from the increased price such shares will bring because of the increment of \$100,000 to the assets of the corporation.

3. The Canadian citizens may claim against the United States that they are beneficially entitled to \$40,000³ of the \$100,000 and that the seizure of the \$100,000 as German assets by the U. S. Custodian would in effect be taking reparations from friendly Allied nationals.

The solution reached under the Agreement with respect to the conflicting claims in this case is based on the general principle that the country where the property is located is entitled to that portion of the property corresponding to the "percentage of direct and indirect German interest" in the corporation, while the portion corresponding to the Allied interest is protected from seizure. However, it is provided further that the country where the property is located should obtain in general no part of the property unless a certain large or important German interest is found in the corporation.⁴ This critical interest is set by the Agreement, roughly speaking, at a 50 percent German shareholding or German control. Thus in the example given, since there is a 60 percent German shareholding, the U. S. Custodian would be entitled to \$60,000 of the \$100,000 and the \$40,000 would inure to the benefit of the Canadian interests in the corporation.

Where there is less than a 50 percent German shareholding, and no German control, subject to exceptions,⁵ the country in which the property is located gives up any claim to the property or to any German interests therein. Then the Custodian of the country where the corporation is organized will be able to seize the German shares and reap the complete benefit from their liquidation. Any non-enemy interests in the corporations would remain unharmed.

³ It is assumed that in this hypothetical case there are no creditors.

⁴ In an exceptional case the requisite interest may exist not in the corporation but in the property under question, as where the corporation is not German controlled but the property is German controlled.

⁵ In the case of dummy and closely held holding companies the country where the property is located is entitled to the portion corresponding to the German interest, however low that interest may be.

Where there is the 50 percent German shareholding or German control, it is provided, in the normal case, not that the country where the property is located itself takes the portion to which it is entitled (the \$60,000 in the above case), but that the property (\$100,000) is to be released in kind and the releasing country is to receive reimbursement to the extent to which it is entitled from the country⁶ where the corporation is organized. The advantage of this mechanism of release and reimbursement is that it results in the economic advantage that comes from reintegrating the corporation property consisting, perhaps, of working capital or sales outlets, with the corporation itself, and so increasing the total value of the corporation as an operating entity. Further, this solution may benefit the economy of the country where the corporation is organized if the corporation is important to it. Also it results incidentally in the automatic protection of non-enemy interests in the corporation.

While the normal mechanism under this Part is that of the release of property in kind and reimbursement certain exceptions to this rule exist based in general on considerations of practicality and national security. When these exceptions are applicable, the country where the property is located may retain the entire property in kind or the portion of the property to which it is entitled, while protection is afforded to non-enemy interests by compensation for the value of their interests or by the release of the portion of the property corresponding to their interests.

These exceptions follow:

1. The property has already been liquidated.
2. The two countries agree that the release of the property would not be practicable or the corporation consents to the liquidation of the property.
3. The property is a production enterprise or a substantial interest therein, the corporation or the property is German controlled, and the country in which the property is located determines that the retention of the property is required for its national security.
4. The two countries agree, because of administrative difficulties or other special circumstances, that the portion of the property may be retained.
5. The corporation is a dummy company or a holding company whose outstanding stock is closely held or is not regularly traded in a recognized financial market.

While no method is set down in the Agreement for the determination of the "percentage of direct and indirect German interest," it is considered that this can only be appropriately determined by a consideration of both creditor and stock interests in the corporation. Before the release of the \$100,000 in the example given, the two countries must agree on the general limits of, and the method of calculating the German enemy interest.

⁶ The country will make this reimbursement from its liquidation of the shares of the reintegrated corporation.

At this time the countries may agree on a method of calculation which satisfies them, provided reasonable provision is made for avoiding harm to nationals of third countries. In the event that the two countries cannot decide on the limits or method of calculating the German enemy interest, after a reasonable time, the matter may be referred to a conciliator who will render a binding and final solution. It is considered that this conciliator, while having leeway to reconcile the different views of the countries at issue, will in general render a decision which takes into account the creditor and stock interests in the enterprise.

The typical case covered by Part IV is concerned with property located in an Allied country belonging to a corporation organized under the laws of Germany, in which corporation there is an Allied interest. As an example, suppose there is \$100,000 in the United States owned by Corporation Y organized under the laws of Germany and the shareholders of this corporation are Dutch citizens to the extent of 40 percent of the shares and German citizens for the remaining 60 percent of the shares. In this situation the following conflicting claims may exist:

1. The American Custodian may claim the entire \$100,000 as belonging to a corporation which is legally a German national, or in which there is German control.
2. The Dutch citizens may claim against the United States that they are beneficially entitled to \$40,000⁷ of the \$100,000 and that the seizure by the Custodian of the entire \$100,000 as German enemy assets is in effect taking reparations from friendly Allied nationals.

The solution reached here may be considered an accommodation of administrative practicality with the general principle that the country where the property is located is entitled to that portion of the property corresponding to the German interest in the corporation while that portion corresponding to the Allied interests would be protected from seizure. Thus, for practical reasons, the Agreement, instead of providing for the protection of even a single share, sets a floor below which the mechanism of protection for Allied interests is inapplicable under the Agreement. Specifically, it is provided that property in an Allied country will be released to the extent of the interests in the corporation of all non-enemy nationals of Parties to the Agreement, if non-enemy nationals of Parties own at least 25 percent of the shares in or control the corporation.⁸ Thus in the example given, the American Custodian would release \$40,000 of the \$100,000 and would retain the remaining \$60,000.

⁷ It is assumed that in this hypothetical case there are no creditors.

⁸ It will be noted that there is a 25 percent and control provision in Part IV while there is a 50 percent and control provision in Part III. The provision in Part IV operates to deprive Allied nationals of protection under the Agreement while that in Part III results in a shift as between custodians of different countries of the right to seize and benefit from certain German enemy assets.

Once a corporation is found with the requisite Allied shareholding or control, although the matter is not spelled out specifically in the Agreement, it is considered appropriate for all Allied interest, both of shareholders and of creditors, to be protected.

It is provided in the Agreement that the release of property will be made pursuant to arrangements between the country where the property is situated and the country whose nationals are concerned. If, however, agreement cannot be reached as to such arrangements, recourse may be had to the conciliator who can fix the appropriate procedure of release.

It should be noted that under this Part only non-enemy nationals of signatory Governments may be protected and such nationals must have had their status as nationals on September 1, 1939. Further, the claim of such a national must be sponsored by his Government and be submitted to the Government where the property is located within one year after the coming into force of the Agreement as between these two Governments.

As a normal rule, as in Part III, release is to be made of the property itself, but the release of the money equivalent is permitted where:

1. The property has been liquidated prior to the filing of an eligible sponsored claim with the country where the property is located.
2. The countries concerned agree that the release of the property would not be practicable.
3. The property is a production enterprise or a substantial interest therein, the corporation or the property is German controlled, and the country where the property is located determines that the retention of the property is required for its national security.

Miscellaneous provisions of the Agreement are set forth in Part V, which make it clear that the Agreement does not oblige an Allied country to recognize (1) any transfer of a German enemy interest occurring after the institution of war-time emergency measures by that Allied country or after the invasion of the territory of that country by Germany, or (2) any forced transfers of non-enemy property in Germany to German enemies if the transfers were without adequate consideration. Also, an Allied country, in determining whether any property is owned or controlled by a German enemy, need not take into account any transfer of property to a German enemy which represents looting or a forced transfer within the meaning of the Inter-Allied Declaration of January 5, 1943, against Acts of Dispossession. An Allied country is not obligated to release an enemy interest in property except to the extent that this interest will be treated by the recipient country as German enemy. It is expressly provided that nothing in the Agreement may be construed to confer any right on a person to prosecute a claim in any court or administrative tribunal against his Government or any other country.

Final and binding compulsory conciliation is provided for by Article 4 of the covering document in conjunction with Part VI of the Annex. Provision is first made that if a dispute arises between two or more Allied countries Parties to the Agreement with respect to the interpretation, implementation or application of the Agreement, these countries will endeavor by every means possible to settle the dispute by negotiation, which may include the use of a mutually acceptable conciliator with such powers as the countries in dispute may agree to. If the dispute between the countries is not resolved within a reasonable time by such negotiation, the dispute, on the request of one of the countries must be settled by an impartial conciliator to be appointed from a Panel of Conciliators to be established pursuant to the provisions of Part VI.

The Panel of Conciliators will consist of seven members to be elected by countries which have signed the Agreement within six months of its coming into force. Each of these countries will nominate not more than three candidates for election to the Panel. The seven candidates receiving the highest number of votes will be considered elected, provided that each of them has received the vote of at least two-thirds of the countries voting. Not more than two nationals of the same country may be elected to the Panel. A President of the Panel will be elected by the countries from the seven members of the Panel.

The President of the Panel has the responsibility, on the request of one of the countries in dispute, for making the appointment of a conciliator from the Panel. This conciliator must formulate a solution which is in his opinion the best possible solution, in the spirit of the Agreement. The solution formulated by him is binding upon the countries concerned and final. Two matters are reserved from the jurisdiction of the conciliator. The first is concerned with determining whether the national security of an Allied country warrants the retention of property by it under Part III or IV of the Agreement. The second is concerned with the obligation under Part III to make full payment of reimbursement in the required currency within seven years after the release of property.

In the covering document, Article 1 provides that the countries which are Parties to the Agreement "shall be guided as far as possible, in their relations with each other, by the provisions" of the Agreement.

The Agreement will come into force as soon as it has been signed by countries which, under Part I, Article 1B, of the Paris Reparation Agreement, are collectively entitled to not less than 35 per cent of the aggregate of shares in Category A of German reparations. Belgium, the Netherlands and the United States signed subject to legislative approval.⁹ On the basis of the percentage of Category A reparations to which these countries

⁹ The Netherlands and Belgium signed the Agreement *sous réserve de ratification* and the United States signed the Agreement "subject to approval" and subject to the reservation of one case from the Agreement.

and Canada are entitled,¹⁰ the Agreement will come into force as soon as the legislatures of the Netherlands and the United States approve the Agreement.

While the Agreement is open for signature by only the other fourteen members of the Inter-Allied Reparation Agency, any other country may signify its desire to become a Party to the Agreement, or to a similar agreement, by notifying Belgium, the depository country within nine months of the coming into force of the Agreement. Upon such notification, countries already Parties to the Agreement would consider in consultation with one another and with the Government filing the notification, its participation in this Agreement or a similar agreement. Under this procedure it is possible that with the consent of the signatories, Latin American countries and countries which were neutrals during World War II, as well as other non-IARA countries, may ultimately participate in this Agreement or a similar agreement.

ELY MAURER *

JAMES SIMSARIAN *

THE INTERNATIONAL BAR ASSOCIATION

Another Bar Association is born. The International Bar Association founded in New York on February 17, 1947 is a federated and delegated body representative of the leading Bar Associations and Legal Societies of the principal nations of the world.

In the founding of this new organization the Committee of sponsorship, which was composed of members from 20 countries, was not unmindful of the actual existence of numerous other associations of lawyers on an international scale which are doing excellent work in promoting their various objectives. The International Bar Association is in no way designed as a competitor of these bodies. It hopes to coöperate with and support the activities of all groups of lawyers in all countries.

It is an Association which has no individual memberships. Its members consist of established societies of lawyers, "any national organization of members of the legal profession," as is stated in its Constitution, being eligible.

¹⁰ Belgium 2.7 percent; Canada 3.5 percent; Netherlands 8.9 percent; United States 28.0 percent.

* Mr. Maurer is an Assistant to the Legal Adviser, Department of State. Mr. Simsarian is American Member of the Committee of Experts on Enemy Property Custodianship of the Inter-Allied Reparation Agency, Brussels, and Special Assistant to the American Delegate to the Inter-Allied Reparation Agency. Mr. Maurer and Mr. Simsarian served as advisers to Mr. Russell H. Dorr, American Minister and Delegate to the Inter-Allied Reparation Agency, who represented the United States in the course of the negotiations leading to the Agreement. The opinions expressed in this Note are those of the writers and are not necessarily those of the Department of State.

The American Bar Association sponsored and promoted the idea. The outstanding success of the Inter-American Bar Association in the Western Hemisphere probably inspired it. In any event it has gotten away to a good start and held a very satisfactory "First International Conference of the Legal Profession" in New York from October 19th to 23rd, 1947, as the guest of the Chamber of Commerce of the State of New York and the New York State Bar Association.

Among those who participated as speakers or Chairmen of symposium groups were His Excellency Oswaldo Aranha, President of the General Assembly of the United Nations; the Right Honorable Sir Hartley Shawcross, Attorney General of England; Dr. Edward V. Saher, Deputy of the Netherlands Bar Association; Mr. Sanga Nilkamhaeng of the Bar Association of Siam; Mr. Miguel Macedo of the Mexican Bar Association; Dr. Gustavo Herrera, delegate from the *Colegio de Abogados del Distrito Federal*, Caracas, Venezuela; Dr. Ali Akbar Akhavi, delegate from the Iranian Bar Association; Mr. Paul J. Edwards, member from the Bar Association of Czechoslovakia; Mohammed Adham, delegate of the Bar Association of Iraq; Dr. Eduardo Salazar Gomez, delegate of the *Academia de Abogados de Quito*; Mr. Thomas G. Lund, delegate from The Law Society of England; Mr. Robert N. Anderson, delegate of the American Bar Association; the honorable George Maurice Morris, Chairman of the House of Deputies of the International Bar Association; the honorable Robert E. Lee, president of the New York State Bar Association; Mr. George Washington, Assistant Solicitor General of the United States; and Hon. Charles E. Murphy, Corporation Counsel of the City of New York.

It is planned to hold a Second International Conference of the Legal Profession at The Hague, Holland, in the summer of 1948, as the guest of the Netherlands Bar Association. Lawyers from the United States desiring to attend this Conference should consult officials of the American Bar Association, of the National Association of Women Lawyers of the United States of America, or the Customs Bar Association of the United States of America, which at present are the only societies of the United States entitled to appoint delegates to it. Other events scheduled to take place in Europe next summer, including the meeting of the General Assembly of the United Nations, the Academy of International Law, and the Olympic Games, make it important to reserve travel and hotel facilities at an early date.

There is a provision in the Constitution of the International Bar Association for "Patrons" of the Association who, upon approval by the Executive Council and payment of the patron's fee of \$25., become entitled to attend the Conferences and sessions of the House of Deputies and to participate in the symposiums of the Conferences. Over two hundred and fifty individual lawyers have already taken advantage of this privilege.

The purposes of the International Bar Association as defined in its

Constitution are (Article I): "to advance the science of jurisprudence in all its phases and particularly in regard to international and comparative law; to promote uniformity in appropriate fields of law; to promote the administration of justice under law among the peoples of the world; to promote in their legal aspects the principles and aims of the United Nations; to establish and maintain friendly relations among the members of the legal profession throughout the world; to coöperate with, and promote coördination among, international juridical organizations having similar purposes."

Dues for member bodies are one hundred dollars (\$100.), United States Currency, per year, or its equivalent, plus an additional fifty dollars (\$50.), United States Currency, or its equivalent, for each Deputy in excess of one. Deputies are authorized on the basis of one for each one thousand members or fraction thereof, with a maximum of ten Deputies for any one member Society. The present members of the International Bar Association include the *Academia de Abogados de Quito*, the American Bar Association, the *Asociacion de Abogados de Guatemala*, the Bar Association of Czechoslovakia, the Bar Association of Siam, the *Colegio de Abogados de Espana*, the *Colegio de Abogados de la Habana*, the *Colegio de Abogados del Distrito Federal*, Caracas, the *Colegio de Abogados de Lima*, the *Colegio de Abogados del Uruguay*, the Customs Bar Association of the United States of America, the Damascus Bar Association, the Egyption Bar Association, the Faculty of Advocates (Scotland), the *Federacion Argentina de Colegios de Abogados*, the General Council of the Bar (England), the General Council of Solicitors, Scotland, the *Instituto da Ordem dos Advogados Brasileiros*, the Iranian Bar Association, the Iraq Bar Association, the Korean Bar Association, The Law Society (England), the Mexican Bar Association, the National Association of Women Lawyers of the United States of America, the Netherlands Bar Association, the *Ordre des Avocats de Liban*, the Palestine Arab Bar Association, the Philippine Bar Association, the *Sociedad de Abogados de la Honduras*, and the Bar Association of Vienna, Lower Austria, and the Burgenland.

In addition to these Bar Associations which have qualified as members of the International Bar Association there are applications under consideration from a number of additional associations of other countries which will come before the next meeting of the Executive Council.

The present officers of the International Bar Association are John Drost, the Netherlands, President; Manuel Ramon Balarezo, Ecuador; Manuel Gimon—Itriago, Venezuela; Antonin Klouda, Czechoslovakia; Hernando de Lavalle, Peru; Gabriel Nassar, Lebanon; Targino Ribeiro, Brazil; Carl B. Rix, U. S. A.; Francisco Villagran, Guatemala; S. H. Vakil, Iran; Gustavo R. Velasco, Mexico; Francisco A. Delgado, Philippine Republic; Phya Raklaprachit Thamachamras, Siam; Ahmed Fouad Koudmain, Syria; Eugenio Sacarelo Fuentes, Uruguay; Emerich Hunna, Vienna; Vice-

presidents; and George M. Morris, U. S. A., Speaker of the House of Deputies; Amos J. Peaslee, U. S. A., Secretary General; Gerald J. McMahon, U. S. A., Assistant Secretary General; and Henry F. Butler, U. S. A., Assistant Treasurer.

There is provision in the By-Laws of the International Bar Association for Associate memberships by Societies having similar purposes, upon approval by the Executive Council and the payment of dues of one hundred dollars (\$100.), United States Currency, or its equivalent. The *Association Internationale de Droit Pénal* has qualified as such an Associate member.

Further information regarding the details of the Conference, to be held at The Hague next Summer, as well as general information regarding the Association, may be obtained by application to the office of the Secretary General, 501 Fifth Avenue, New York 17, N. Y.

AMOS J. PEASLEE

MISCELLANEOUS

INSTITUT DE DROIT INTERNATIONAL. At its first meeting since 1939, held at Lausanne, Switzerland, from the 6th to the 12th of August, 1947, the *Institut de Droit International* adopted among others two resolutions of special interest to readers of the JOURNAL. The texts of these resolutions,* adopted on the 9th and 12th of August respectively, follow:

*Declaration concerning fundamental rights of man, basis for a
restoration of international law*

The Institute of International Law,

Considering that, on the morrow of the events which have shaken to its very foundations a civilization traditionally founded upon respect for human values, it is important before everything else to affirm anew certain principles which respond to a peculiar degree to the present demands of the juridical conscience of civilized peoples;

Noting that those regimes which have enslaved and degraded the human person have sought in that complete subordination of the individual to their political ends the means of embarking on enterprises of aggression and conquest, and that it is important to prevent forever their return;

Recalling that the Members of the United Nations have assigned themselves the aim "to achieve international coöperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms" (Art. 1, paragraph 3, of the United Nations Charter; compare Article 55, paragraph c);

Declares that

* Texts provided by M. Fernand de Visser, Secretary General; translations made in this office.

I

Recognition and respect for the inherent rights of the human person, whom the State should serve and not enslave, are intimately linked to the progress of the law of nations.

II

Such recognition and such respect are at the base of any functional concept of Power, which derives its justification from its capacity to fulfill the individual and social aims of the human person.

The diffusion of this fundamental idea in public opinion will constitute an element calculated to moderate the exercise of Power: it will maintain the State in its proper role by preserving it against the tendency of those in possession of Power to abuse it.

III

An effective juridical order among the States is inseparable from respect for the human person in the internal order of each State.

In the international order the functional and moderating conception of Power continues to be obscured by the domination of a tradition where sees in the sovereign State, organism of security and instrument of power, the highest form in the juridical order.

IV

To affirm respect for the rights of the human person without assuring their efficacy by adequate measures of guarantee and supervision is insufficient both on the international and the national level.

V

The Institute sees in the acceptance and diffusion of the ideas embodied in the present Declaration an essential condition for the observance of international law and its technical development.

Codification of international law

The Institute of International Law,

Recognizing the desirability of a codification of the law of nations of such nature as to dissipate some of its uncertainties and to promote its observance,

Emphasizes the dangers which any official codification which should follow the method of the Codification Conference held at The Hague in 1930 would present today in proportion as it should base the authority of

the rules codified upon express acceptance by the States. Such a method provides each government with the opportunity to call in question, by its refusal to accept them, rules of law which both scientific doctrine and judicial practice would consider, in a general manner, as established at the given moment; there emerges from this situation the risk of weakening and shattering the very law which codification has for its objective to render precise and firm.

The Institute, without discarding the possibility of international conventions and declarations on subjects concerning which they might be judged attainable, believes that, for the moment, the most important contribution to the work of codification would consist in carrying out, on the national and international planes, research activities of a scientific character with a view to arriving at an exact statement of the actual condition of international law. This inventory would serve as a basis at once for a scientific effort and also for official action undertaken according to methods deemed best suited to filling the gaps of international law and remedying its imperfections.

* * *

GREEK INSTITUTE OF INTERNATIONAL AND FOREIGN LAW. This Institute, founded in 1939 but dissolved by the Germans in 1941, has been reestablished and is once more active in Athens, under supervision of the Departments of Justice and Foreign Affairs of the Greek Government.* Its Board of Directors includes the President of the Council of State, the President of the Supreme Court (Areios Pagos), the Dean of the Law School of Athens University, the Special Legal Advisor to the Royal Ministry for Foreign Affairs, the President of the Athens Bar Association, and the Director General of Public Accounting in the Ministry of Finance.

The purposes of the Institute include:

- (a) To conduct studies of international and foreign law, especially of legal matters relating to Greece and the Greeks living abroad; and to foster research work in comparative law.
- (b) To forward information on international and foreign law to Ministries, Courts, and other State agencies, and to lawyers and notaries public.
- (c) To forward information on international and foreign law to committees and members of the Chamber of Deputies.
- (d) To forward information on Greek law to international or foreign courts and authorities, and to lawyers and notaries public abroad; and to contribute through all other means towards better understanding and application of Greek law outside Greece.

* Information supplied by C. A. Triantaphyllakos, First Secretary of the Royal Greek Embassy.

* * *

AMERICAN BAR ASSOCIATION. The House of Delegates of the American Bar Association, meeting in Cleveland, adopted six resolutions reported by a Special Committee for Peace and Law through United Nations.* The first resolution approved the conclusion of the Inter-American Treaty of Reciprocal Assistance and favored its ratification by the United States; the second favored coöperation with the International Law Commission of the United Nations looking toward development and eventual codification of international law; the third favored continued American support of the United Nations in matters of international scope; the fourth favored consideration of amendments to the United Nations Charter looking to elimination of veto power in security action; the fifth expressed interest in the proposed International Trade Organization and recommended that the project, when completed, should be submitted for approval to the United States Congress; the sixth favored a non-partisan foreign policy, aid to Greece, and the European Reconstruction (Marshall) Program. The resolutions were transmitted to officials of the United Nations and the United States, and various organizations coöperating in and with the American Bar Association.

* * *

PROFESSOR LAUTERPACHT AT COLORADO. Professor Hersch Lauterpacht will be the first Charles Inglis Thompson Guest Professor at the University of Colorado. He will be in Boulder from June 17 to August 28 and will lecture on "Current Problems of International Law" and also conduct a seminar for advanced students.

P. B. P.

* Texts published by the American Bar Association, September 17, 1947.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD AUGUST 1-OCTOBER 31, 1947

(Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: *C. I. E. D.*, Chronology of International Events and Documents, Royal Institute of International Affairs; *C. S. Monitor*, Christian Science Monitor; *Cmd.*, Great Britain Parliamentary Papers by Command; *Cong. Rec.*, Congressional Record; *D. S. B.*, Department of State Bulletin; *E. S. C. O. R.*, United Nations Economic and Social Council Official Records; *G. A. (II) J.*, Journal of the Second Session of the U. N. General Assembly; *G. A. (II) O. R.*, Official Records of the Second Session of the U. N. General Assembly; *G. B. M. S.*, Great Britain Miscellaneous Series; *G. B. T. S.*, Great Britain Treaty Series; *I. B. E. D.*, International Bank for Reconstruction and Development; *I. C. E. F.*, International Children's Emergency Fund; *I. E. F. C.*, International Emergency Food Council; *I. M. F.*, International Monetary Fund; *N. Y. T.*, New York Times; *P. A. U.*, Pan American Union; *S. C. O. R.*, United Nations Security Council Official Records; *T. I. A. S.*, U. S. Treaties and other International Acts Series; *U. N. W. B.*, United Nations Weekly Bulletin.

GENERAL*

May, 1947

15-October 2 TELECOMMUNICATION CONFERENCES. Three conferences were held at Atlantic City—(1) International Radio Conference which opened May 15; (2) International Telecommunication Conference, which opened July 1; (3) International High Frequency Broadcasting Conference which began Aug. 26. Report on the conferences: *D. S. B.*, Nov. 30, 1947, pp. 1033-1034, 1040-1041.

27 GREAT BRITAIN-NEW ZEALAND. Signed agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Text: New Zealand Dept. of External Affairs *Publication* No. 35.

June, 1947

5 GREAT BRITAIN-NORWAY. Signed agreement in London relating to the participation of a Norwegian brigade in the occupation of the British zone in Germany. Text: *G. B. T. S.*, No. 72 (1947), *Cmd.* 7226.

14-September 30 GREECE-TURKEY-UNITED STATES. U. S. Department of State issued Nov. 10, 1st report to Congress on assistance to Greece and Turkey for the period ended Sept. 30. Text: Dept. of State *Near Eastern Series* No. 11; *N. Y. T.*, Nov. 11, 1947, p. 18.

27 CANADA-SWEDEN. Signed air transport agreement at Ottawa. Text: Canada *Treaty Series*, 1947, No. 16.

* See p. 182, below, for United Nations and Specialized Agencies; also p. 190 and following for United Nations agreements.

August, 1947.

- 1 EGYPT—GREAT BRITAIN. Mr. Bevin presented a White Paper to Parliament summarizing the negotiations for revising the 1936 treaty. *London Times*, Aug. 2, 1947, p. 3. Text: *Egypt* No. 2 (1947), *Cmd.* 7179.
- 1-19 INDONESIA. Dutch Government announced August 1 it had accepted U. S. offer of July 31 to mediate the dispute. *London Times*, Aug. 2, 1947, p. 4; *D. S. B.*, Aug. 24, 1947, p. 397. On Aug. 4 the U. S. Department of State announced it had been unable to offer its good offices to the Indonesian Government due to lack of communications. *N. Y. T.*, Aug. 5, 1947, p. 10. U. S. mediation offer was presented Aug. 6 to the Indonesian Republic in a broadcast. *N. Y. T.*, Aug. 7, 1947, p. 2. The Indonesian reply of the 7th was handed to consuls of the United States, Australia, Great Britain, France and China in Batavia. *London Times*, Aug. 8, 1947, p. 3. Text: *N. Y. T.*, Aug. 8, 1947, p. 6. Text of Netherlands' appeal to the Indonesian Republic urging immediate formation of an East Indies Federation, released the 12th: *N. Y. T.*, Aug. 13, 1947, p. 10. Announcement was made the 16th of U. S. final offer to mediate. *N. Y. T.*, Aug. 17, 1947, p. 1. Indonesian reply of the 17th rejected offer, but urged the United States to use its influence to have the U. N. Security Council send an international arbitration commission. *N. Y. T.*, Aug. 18, 1947, p. 11. On the 19th the United States withdrew its offer. Text of statement: *N. Y. T.*, Aug. 20, 1947, p. 4. Text of statement issued Aug. 16 by U. S. Department of State, outlining activity from July 31 to date: *D. S. B.*, Aug. 24, 1947, pp. 397-398.
- 2 BULGARIA—YUGOSLAVIA. Yugoslav Government announced 4 agreements concerning economic and political coöperation between the two countries, including joint action in relation to Greece. *N. Y. T.*, Aug. 3, 1947, p. 35.
- 8-September 21 GERMAN OCCUPATION. U. S. Military Governor announced Aug. 8 that agreements between combined Anglo-American zones and Czechoslovakia, Belgium, Holland, France, Italy, Austria and Switzerland had been concluded. *London Times*, Aug. 4, 1947, p. 4. Conclusion of a trade agreement between Yugoslavia and the combined British and American zones was announced Aug. 13. *London Times*, Aug. 14, 1947, p. 4. On Aug. 23 announcement was made of the conclusion of an agreement by Hungary with the Soviet zone, providing for mutual deliveries of goods. *N. Y. T.*, Aug. 24, 1947, p. 47. Announcements were made Sept. 16 and 17 of a one-year trade agreement between Netherlands and the French zone, and an agreement between Yugoslavia and the Anglo-American zone. *N. Y. T.*, Sept. 17, 1947, p. 10. *C. I. E. D.*, Sept. 8/21, 1947, p. 546. An agreement between Hungary and the Anglo-American zones was announced Sept. 21. *London Times*, Sept. 22, 1947, p. 3.
- 4 LEAGUE OF NATIONS. Sean Lester announced the completion of the liquidation of League assets. *N. Y. T.*, Aug. 5, 1947, p. 12; *London Times*, Aug. 5, 1947, p. 3.
- 5 GREAT BRITAIN—GREECE. Great Britain informed Greece of intention to withdraw British troops from Greece. *London Times*, Aug. 6, 1947, p. 4.
- 5/September 5 POLAND—SOVIET RUSSIA. Signature of a one-year trade agreement was reported Aug. 5. *N. Y. T.*, Aug. 6, 1947, p. 10; *United Nations World* (N. Y.), Oct. 1947, p. 59. Another agreement was signed Sept. 5, whereby Russia will supply 300,000 tons of grain. *N. Y. T.*, Sept. 6, 1947, p. 9; *London Times*, Sept. 6, 1947, p. 3.

- 6/26 UNITED STATES—VATICAN. President Truman and Pope Pius XII exchanged notes on peace. Texts: *N. Y. T.*, Aug. 29, 1947, p. 11; *D. S. B.*, Sept. 7, 1947, pp. 478-480.
- 6-29 GERMAN OCCUPATION. United States and Great Britain announced Aug. 6 they would defer further allocations to Russia of German plants in their zones until Germany was unified economically. *N. Y. T.*, Aug. 8, 1947, p. 5. Replying on Aug. 29 to Russian note of Aug. 18 U. S. note stated unwillingness to permit a further delay in unification due to lack of Russian consent. It also charged Russian failure to live up to their agreement of 1945 to treat Germany as an economic whole. *N. Y. T.*, Sept. 3, 1947, p. 1. Text: p. 3. Texts of both notes: *D. S. B.*, Sept. 14, 1947, pp. 530-531.
- 6-October 30 AUSTRIAN OCCUPATION. British delegate to Austrian Treaty Commission protested on Aug. 6 the Soviet seizure of the Anglo-American oil refinery at Lobau and the United States protested to the Soviet commander Aug. 7. *London Times*, Aug. 7, 1947, p. 4; *N. Y. T.*, Aug. 7, 1947, p. 9 and Aug. 8, p. 6. U. S. Department of State announced Oct. 30 a second protest. *N. Y. T.*, Oct. 31, 1947, p. 3.
- 8-26 DAIREN, MANCHURIA. U. S. Department of State announced Aug. 8 that because of Russian objections, the United States had not sent American courier ships to Dairen since March, 1947. *N. Y. T.*, Aug. 9, 1947, p. 6. U. S. protest of Aug. 14 over continued Soviet occupation was made public Aug. 21. Text: *N. Y. T.*, Aug. 22, 1947, pp. 1, 2; *D. S. B.*, Aug. 31, 1947, p. 436. The Chinese Government ordered Aug. 20 that the harbor be closed to foreign shipping, in an attempt to bar exclusive Russian occupation. The port had been declared open for foreign shipping in March, 1947. *N. Y. T.*, Aug. 21, 1947, p. 15. Soviet note of Aug. 26 refused to open the port to international commerce as a free port, or to be responsible for treatment of Americans there. Excerpts: *N. Y. T.*, Sept. 3, 1947, p. 12; *D. S. B.*, Sept. 14, 1947, p. 533. Text of Soviet note of Feb. 27, 1947: pp. 533-534.
- 9 GERMAN OCCUPATION. U. S. note to French Government proposed an early conference of Great Britain, France and the United States to consider industrial rehabilitation of Germany. *N. Y. T.*, Aug. 10, 1947, pp. 1, 28. Text: p. 28; *D. S. B.*, Aug. 17, 1947, p. 333.
- 9 GREAT BRITAIN—HUNGARY. Signed 3-year trade agreement in London. *N. Y. T.*, Aug. 10, 1947, p. 16; *C. I. E. D.*, Aug. 4/24, 1947, p. 457.
- 10-15 PAKISTAN. The opening meeting of the Constituent Assembly was held Aug. 10. *N. Y. T.*, Aug. 11, 1947, p. 2; *London Times*, Aug. 11, 1947, p. 4. Mohammed Ali Jinnah assumed the presidency of the Assembly on Aug. 11. The Assembly adopted a new flag, consisting of a field $\frac{1}{4}$ white and $\frac{3}{4}$ green, bearing the Moslem crescent and star in white on the green bar. *N. Y. T.*, Aug. 12, 1947, p. 2; *London Times*, Aug. 12, 1947, p. 3. Mr. Jinnah was sworn in Aug. 15 as the first Governor General. *London Times*, Aug. 16, 1947, p. 4.
- 11/September 23 GREAT BRITAIN—HUNGARY. British note alleged privileges, inconsistent with the peace treaty had been granted to four Soviet-Hungarian companies. *London Times*, Aug. 12, 1947, p. 3. Hungarian reply stated that under a law of 1931, such privileges had been granted to many undertakings and that the Government was willing to grant preferences to any Hungarian or foreign company, including British and U. S.-owned companies, if legal conditions could be fulfilled. *C. I. E. D.*, Sept. 22/Oct. 5, 1947, p. 568.

- 11-October 20 KOREAN OCCUPATION. Secretary Marshall's note to Mr. Molotov asked that the Joint Commission on Korea submit a report by Aug. 21 on the status of its deliberations. Text: *N. Y. T.*, Aug. 14, 1947, p. 14; *D. S. B.*, Aug. 24, 1947, pp. 898-899. Mr. Molotov on Aug. 23 agreed to the suggestion. Text: *D. S. B.*, Sept. 7, 1947, pp. 475-476; *N. Y. T.*, Aug. 30, 1947, p. 6. U. S. note of Aug. 28 proposed a 4-power conference in September to discuss a provisional government for Korea. Text: *N. Y. T.*, Aug. 30, 1947, p. 6; *D. S. B.*, Sept. 7, 1947, pp. 473-475. Russia turned down the suggestion Sept. 4. Excerpts: *N. Y. T.*, Sept. 8, 1947, p. 9. U. S. reply of Sept. 17 gave notice of intent to refer the problem to the U. N. General Assembly. Text: *N. Y. T.*, Sept. 18, 1947, p. 5. Texts of notes of Sept. 4 and 17: *D. S. B.*, Sept. 28, 1947, pp. 623-624. On Sept. 26 Russia proposed simultaneous withdrawal of troops from the two zones, beginning in 1948. *N. Y. T.*, Sept. 27, 1947, pp. 1, 8; *London Times*, Sept. 27, 1947, p. 4. Russian note of Oct. 9 repeated this proposal. *C. I. E. D.*, Oct. 6/26, 1947, p. 616. In a note of Oct. 17 the United States offered a draft resolution to the United Nations calling for establishment of a national government and an election under a U. N. commission, to be held not later than Mar. 31, 1948. Text: *D. S. B.*, Oct. 26, 1947, p. 821. The question was placed on the agenda of the General Assembly's Political and Security Committee. *N. Y. T.*, Oct. 18, 1947, p. 1. United States announced Oct. 20 it had notified Russia that only the United Nations could solve the deadlock on the independence of Korea. *N. Y. T.*, Oct. 21, 1947, p. 1. Text of U. S. note: pp. 1, 11. Text, with Mr. Molotov's note of Oct. 9: *D. S. B.*, Nov. 2, 1947, pp. 867-868.
- 12 PEACE TREATY (Japanese). U. S. aide-memoire to Soviet Chargé at Washington stated U. S. views on desirability of an 11-nation conference to draw up the treaty. Text: *D. S. B.*, Aug. 24, 1947, pp. 395-396; *N. Y. T.*, Aug. 16, 1947, p. 5.
- 12-October 27 RUHR COAL PRODUCTION. Anglo-American discussions on Ruhr coal production were held in Washington Aug. 12-Sept. 10. *N. Y. T.*, Aug. 13, 1947, p. 1 and Sept. 11, p. 1. British and U. S. delegations: *D. S. B.*, Aug. 17, 1947, pp. 326-327. Return of mines to German management responsible to U. S. and British military governments was recommended. Summary of recommendations: *N. Y. T.*, Sept. 11, 1947, pp. 1, 6; *London Times*, Sept. 12, 1947, p. 4. Text of report and recommendations: *D. S. B.*, Sept. 21, 1947, pp. 576-584. France, Belgium, the Netherlands and Luxembourg protested the proposals. *N. Y. T.*, Oct. 3, 1947, p. 22; *C. I. E. D.*, Sept. 22/Oct. 5, 1947, p. 571. Great Britain and the United States announced Oct. 27 approval of the recommendations and appointment of German Ruhr Coal Commission. Members: *N. Y. T.*, Oct. 28, 1947, p. 7.
- 13 GREAT BRITAIN—IRAQ. Signed financial agreement at London. *London Times*, Aug. 14, 1947, p. 4. Text: *G. B. T. S.* No. 63 (1947), *Cmd.* 7201.
- 14 GERMAN PROPERTY. United States, Great Britain, France and Italy signed in Washington quadripartite agreement on German external assets in Italy. Text: *D. S. B.*, Aug. 24, 1947, pp. 388-390; *G. B. T. S.* No. 75 (1947), *Cmd.* 7223.
- 14 GREAT BRITAIN—INDIA. Concluded an interim agreement for 1947 on India's sterling balances. *London Times*, Aug. 15, 1947, p. 4. Text: *Cmd.* 7195.
- 14 ITALY—UNITED STATES. Signed at Washington two Memoranda of Understanding regarding settlement of certain wartime claims and related matters, including Italian assets in the United States. *N. Y. T.*, Aug. 15, 1947, pp. 1, 4.

- Summary: p. 4. Texts, with related notes: *D. S. B.*, Aug. 24, 1947, pp. 372-387.
- 14 JAPANESE OCCUPATION. Far Eastern Commission approved policy decision concerning reduction of Japanese industrial war potential. Text: *D. S. B.*, Sept. 14, 1947, pp. 513-516.
- 15 INDIA. Independence bill came into force. *London Times*, Aug. 15, 1947, p. 4; *N. Y. T.*, Aug. 15, 1947, p. 1. This ended the British rule which began Dec. 31, 1800 when Queen Elizabeth incorporated, under Royal Charter, the London East India Company. p. 2. Indian Independence (international arrangements) Order, 1947, has, as of this date, the effect of an agreement duly made between the Dominion of India and the Dominion of Pakistan. This agreement relates to the devolution of international rights and obligations upon the two dominions. India Information Services [*Press Release*] (Washington) No. 3456.
- 15-September 2 INTER-AMERICAN DEFENSE CONFERENCE. Opened Aug. 15 at Petropolis, near Rio de Janeiro. Elected Brazilian Foreign Minister as permanent chairman. *N. Y. T.*, Aug. 16, 1947, p. 1. U. S. delegation: *N. Y. T.*, Aug. 2, 1947, p. 6; *D. S. B.*, Aug. 17, 1947, pp. 325-326. Text of Secretary Marshall's address: *N. Y. T.*, Aug. 21, 1947, p. 11; *D. S. B.*, Aug. 31, 1947, pp. 414-415. Agreed Aug. 29 on area where an attack would constitute aggression against all the American republics. Map: *N. Y. T.*, Aug. 30, 1947, p. 7. Signed treaty of reciprocal assistance on Sept. 2. Text: *D. S. B.*, Sept. 21, 1947, pp. 565-567; *N. Y. T.*, Aug. 31, 1947, p. 26. Interpretation of certain aspects of the treaty, statement by the U. S. delegation: *D. S. B.*, Sept. 21, 1947, p. 573. Text of President Truman's address: *N. Y. T.*, Sept. 3, 1947, p. 2; *D. S. B.*, Sept. 14, 1947, pp. 498-501. Texts of Secretary Marshall's and Senator Vandenberg's radio reports: pp. 501-505; *N. Y. T.*, Sept. 5, 1947, p. 4. Text of Final Act: *D. S. B.*, Sept. 21, 1947, pp. 567-572. Spanish text of report on the results of the Conference, including text of treaty: *P. A. U. Serie sobre Congresos y Conferencias* No. 52. English text of same: *P. A. U. Congress and Conference Ser.* No. 53. Portuguese text of treaty: *Conference Diario das Sessões* No. 16, pp. 182-185.
- 17/22 HUNGARY—UNITED STATES. United States issued statement on alleged abuses of new Hungarian electoral law. Text: *D. S. B.*, Aug. 24, 1947, p. 392; *N. Y. T.*, Aug. 18, 1947, pp. 1, 5. British Foreign Office issued parallel statement. Text: *London Times*, Aug. 18, 1947, p. 3. Hungarian reply of the 22d rejected U. S. charges. *N. Y. T.*, Aug. 23, 1947, p. 14.
- 18 INDIA—SOUTH AFRICA. Announcement was made of South African rejection of proposals to resume relations, broken off in 1946. *N. Y. T.*, Aug. 19, 1947, p. 12; *London Times*, Aug. 21, 1947, p. 3.
- 18-22 GREAT BRITAIN—UNITED STATES. Opened talks Aug. 18 in Washington on British financial position. *N. Y. T.*, Aug. 19, 1947, p. 1. Reached agreement Aug. 20 by exchange of notes, on emergency action to halt drain on British dollar supply. *London Times*, Aug. 21, 1947, p. 4; *N. Y. T.*, Aug. 21, 1947, p. 1. Text of notes: p. 2; *Cmd.* 7210. Meetings ended Aug. 22 with U. S. approval of cut in British purchase of American goods. *N. Y. T.*, Aug. 23, 1947, p. 1.
- 18-October 30 BULGARIA. U. S. note to Allied Control Commission for Bulgaria asked Russian member of the Commission to instruct the Bulgarian Govern-

ment to suspend death sentence passed on Nikola Petkov on Aug. 16. Text: *N. Y. T.*, Aug. 19, 1947, pp. 1, 7. Request was rejected Aug. 22. *N. Y. T.*, Aug. 23, 1947, p. 11. Texts of both notes: *D. S. B.*, Aug. 31, 1947, pp. 429-430. Texts of additional U. S. note and substance of Russian reply delivered Aug. 23 and 25 respectively: *D. S. B.*, Sept. 7, 1947, pp. 481-482. British proposal for consultation on review of the sentence was rejected by Russia on Aug. 26. *London Times*, Aug. 27, 1947, p. 4. U. S. Ambassador at Moscow delivered Aug. 30 U. S. reply to Russian note of Aug. 25. Text: *D. S. B.*, Sept. 14, 1947, pp. 531-533. British note protested suppression of the opposition Agrarian Party. *London Times*, Sept. 12, 1947, p. 3. Execution of Petkov was followed by statement by the U. S. Department of State denouncing the act. *N. Y. T.*, Sept. 24, 1947, p. 1. Text of statement: p. 6; *D. S. B.*, Oct. 5, 1947, pp. 702-703. Text of British note of condemnation dated Sept. 25: *London Times*, Sept. 26, 1947, p. 4. Bulgarian note of Oct. 4 to Great Britain stated that British action must be regarded as an encroachment on Bulgaria's judicial authority. *C. I. E. D.*, Sept. 22/Oct. 5, 1947, p. 562. Bulgarian complaint against British protests was rejected Oct. 30 by Great Britain. *N. Y. T.*, Oct. 31, 1947, p. 19; *London Times*, Oct. 31, 1947, p. 4.

- 19 DENMARK—GREAT BRITAIN. Signed agreement in London relating to certain rights in respect of industrial property which has been affected by the war. Text: *G. B. T. S.*, No. 69 (1947), *Cmd.* 7208.
- 20 FRANCE—POLAND. Signed two trade agreements. *C. I. E. D.*, Aug. 4/24, 1947, p. 454.
- 22-27 GERMAN OCCUPATION. British, French and American representatives held talks in London to consider proposals to raise the level of industry in the economically merged U. S.-British zones. *N. Y. T.*, Aug. 23, 1947, p. 1. Session ended without full agreement. Text of communiqué: *N. Y. T.*, Aug. 29, 1947, p. 5; *London Times*, Aug. 29, 1947, p. 3; *D. S. B.*, Sept. 7, 1947, pp. 467-468. Text of Revised Level of Industry Plan for the U. S.-British zones; pp. 468-472; *Current History*, Oct. 1947, pp. 232-234. British note of Sept. 5 rejected Soviet protest on the plan. *N. Y. T.*, Sept. 6, 1947, p. 7; *C. I. E. D.*, Aug. 25/Sept. 7, 1947, p. 501. U. S. note of the 30th, in reply to Polish note of the 14th, denied that the German bizonal level-of-industry agreement between Great Britain and United States, threatened European security. *N. Y. T.*, Oct. 1, 1947, p. 19. Texts: *D. S. B.*, Oct. 12, 1947, pp. 741-743.
- 28 EGYPT—VATICAN. Announcement was made that Pope Pius XII had appointed an apostolic internuncio to Egypt, the first Moslem country to have diplomatic relations of this rank. *N. Y. T.*, Aug. 24, 1947, p. 21.
- 23 WORLD WAR. Principality of Monaco decided that a state of war no longer exists with Germany. A decree will be promulgated, effective Sept. 1. *N. Y. T.*, Aug. 24, 1947, p. 45; *London Times*, Aug. 25, 1947, p. 3.
- 26 BORNEO, EAST. Netherlands Government established self-governing territory of East Borneo. *N. Y. T.*, Aug. 27, 1947, p. 13.
- 26-September 2. BRITISH COMMONWEALTH RELATIONS CONFERENCE. Opened Aug. 26 at Canberra for preliminary discussions on the Japanese peace treaty. Elected Mr. Evatt as chairman. *London Times*, Aug. 27, 1947, p. 4; *N. Y. T.*, Aug. 27, 1947, p. 13. Conference closed Sept. 2. *London Times*, Sept. 3, 1947, p. 3. Summary of action: *N. Y. T.*, Sept. 4, 1947, p. 2; *London Times*, Sept.

2, 1947, p. 3. Text of report on the conference, comments and proposals regarding New Zealand policy toward certain issues of the Japanese peace settlement: New Zealand Dept. of External Affairs *Publication* No. 38.

27-28 CUSTOMS UNION. At the close of a meeting in Copenhagen the Foreign Ministers of Norway, Denmark and Sweden announced that the subject of a customs union would be examined. *N. Y. T.*, Aug. 29, 1947, p. 6; *London Times*, Aug. 29, 1947, p. 4.

28-November 5 IRAN—SOVIET RUSSIA. Russian notes of Aug. 28 and Sept. 15 demanded a share of Iranian oil and Iranian ratification of agreement, signed Apr. 6, 1946, under which a joint company would be formed to exploit northern oil fields. *N. Y. T.*, Sept. 19, 1947, p. 15. On Oct. 22 the Iranian Majlis (parliament) voted to reject the 1946 agreement and begin a 5-year exploration program from which all foreign capital would be barred. *N. Y. T.*, Oct. 23, 1947, pp. 1, 4; *London Times*, Oct. 23, 1947, p. 4. History of controversy: *London Times*, Oct. 24, p. 5. On Nov. 5 the Shah of Iran ratified Majlis' rejection of the agreement. *N. Y. T.*, Nov. 6, 1947, p. 8.

September, 1947

1-6 INTERNATIONAL LAW ASSOCIATION. Fifteen nations were represented at the opening of the conference at Prague. *London Times*, Sept. 4, 1947, p. 3. Adopted resolutions on human rights development and formulation of international law, conflicts of jurisdiction in the sale of goods and divorce law. *London Times*, Sept. 8, 1947, p. 3.

2 BULGARIA—POLAND. Signed trade agreement at Sofia. *N. Y. T.*, Sept. 3, 1947, p. 10.

2-7 STATISTICAL INSTITUTE, INTER-AMERICAN. First session of the Inter-American Statistical Institute was held in Washington with 21 countries represented. Discussed plans for a 1950 census. On Sept. 8 the conference was to join the conference of the International Statistical Institute. *N. Y. T.*, Sept. 7, 1947, p. 50. U. S. delegation: *D. S. B.*, Sept. 14, 1947, pp. 517-518.

3 ITALY—UNITED STATES. Signed agreement providing for the evacuation of 15,000 U. S. troops from Italy during the 90-day period following ratification of the Italian peace treaty. *N. Y. T.*, Sept. 4, 1947, p. 7.

5 AUSTRALIA—GREAT BRITAIN. Australia announced sale of \$5,250,000 in gold and pledge of its entire production of gold. *N. Y. T.*, Sept. 6, 1947, p. 9.

5 CZECHOSLOVAKIA—RUMANIA. Signed cultural agreement, agreed to raise legations to embassies and announced a trade agreement. *London Times*, Sept. 6, 1947, p. 3.

8 FRANCE—GREAT BRITAIN. Exchanged ratifications at London of their 50-year mutual defense treaty, signed at Dunkirk, Mar. 4, 1947. *N. Y. T.*, Sept. 11, 1947, p. 4; *London Times*, Sept. 9, 1947, p. 4.

8 GREAT BRITAIN—YUGOSLAVIA. Signed agreement at Bled concerning Yugoslav displaced persons. *London Times*, Oct. 22, 1947, p. 3. Text: *G. B. T. S.* No. 77 (1947), *Cmd.* 7232.

8/13 GREECE. Premier Sophoulis offered full amnesty for guerrillas who would lay down arms as soon as possible, such amnesty to be under an international committee with full power to supervise and guarantee. *N. Y. T.*, Sept. 9,

- 1947, pp. 1, 11. Parliament passed bill Sept. 13 granting unconditional amnesty for surrender within 30 days. *United Nations World* (N. Y.), Nov. 1947, p. 56.
- 10/19 FRANCE—FRENCH INDO-CHINA. French High Commissioner offered full political independence to the 3 Indo-Chinese states within the framework of a French commonwealth of nations. *London Times*, Sept. 11, 1947, p. 4. Viet Nam National Front rejected Sept. 19 the peace proposals and made appeal to the U. N. Security Council, Great Britain, China and U. S. A. to bring about "a lasting peace on the basis of justice and equality." *C. I. E. D.*, Sept. 8/21, 1947, p. 538.
- 11 BENGAL—PUNJAB. Summary of the award of the Punjab and Bengal Boundary Commissions in the partition of the provinces was released. Text: India Information Services [*Press Release*] (Washington), No. 3464.
- 12 CUSTOMS UNION. French Foreign Ministry announced that 13 European nations had decided to form a group to study possibility of a customs union or unions. List of countries: *N. Y. T.*, Sept. 18, 1947, p. 1.
- 12-19 GREAT BRITAIN—YUGOSLAVIA. British note warned against maltreatment of Allied officers and men, and demanded immediate release of all Allied service personnel by Yugoslavia. *N. Y. T.*, Sept. 15, 1947, p. 5. Receipt of Yugoslav reply was announced Sept. 16. *London Times*, Sept. 17, 1947, p. 3. U. S. Department of State announced Sept. 19 that all Allied military personnel had been released. *D. S. B.*, Sept. 28, 1947, p. 649.
- 15 TRIESTE. Free Territory was established with the deposit of ratifications of the Italian peace treaty. *London Times*, Sept. 16, 1947, p. 8.
- 16 CHILE—GREAT BRITAIN. Signed civil aviation agreement at Santiago. *London Times*, Sept. 17, 1947, p. 3. Text: *Chile* No. 1 (1947), *Cmd.* 7234.
- 16 WORLD WAR. State of war between Austria and Great Britain was declared ended by Great Britain. *N. Y. T.*, Sept. 17, 1947, p. 8; *London Times*, Sept. 17, 1947, p. 4.
- 18 BURMA—UNITED STATES. Announced decision to exchange representatives with rank of Ambassadors. *D. S. B.*, Sept. 28, 1947, p. 648.
- 20 INDIA—PAKISTAN. Issued joint statement on necessity for coöperation in establishing peaceful conditions. *London Times*, Sept. 22, 1947, p. 4; *C. I. E. D.*, Sept. 8/21, 1947, p. 538.
- 22 ECONOMIC COÖPERATION COMMITTEE. The Committee of European Economic Coöperation, set up by the Economic Conference in Paris, at its final session signed a report calling for U. S. help of about 20 billion dollars to implement the "Marshall Plan." *London Times*, Sept. 23, 1947, p. 4; *N. Y. T.*, Sept. 23, 1947, p. 1. Summary: p. 10; *London Times*, Sept. 29, 1947, pp. 5, 8. Official summary of report: *D. S. B.*, Oct. 5, 1947, pp. 684-687. Text: *N. Y. T.*, Sept. 24, 1947, pp. 25-28; Dept. of State *European Ser.* No. 28. Text of technical reports: Dept. of State *European Ser.* No. 29. Text of President Truman's statement: *D. S. B.*, Oct. 5, 1947, p. 688. List of countries represented on the Committee: *D. S. B.*, Oct. 5, 1947, p. 681.
- 22 ECUADOR—UNITED STATES. U. S. Department of State announced that "normal diplomatic relations" had been resumed, following the election of Carlos Julio Arosemena as President. *D. S. B.*, Oct. 5, 1947, p. 707.

22/23 UNITED STATES—YUGOSLAVIA. U. S. note was delivered Sept. 22, protesting against irresponsible actions in presenting ultimatums to British and American troops in the Trieste area, and urging settlement of disputes between local military posts "through normal civilized procedures." Text of statement by U. S. Acting Secretary of State: *D. S. B.*, Oct. 5, 1947, p. 703. Yugoslav note of the 22d protested alleged unfriendly acts by the U. S. forces during withdrawal from territory ceded to Yugoslavia under the Italian peace treaty, and U. S. note rejected same. Texts: *D. S. B.*, Oct. 5, 1947, pp. 703-704. Summary of U. S. answers to Yugoslav charges: pp. 704-706.

24-25 BURMA. Constituent Assembly unanimously approved the Constitution. *London Times*, Sept. 25, 1947, p. 3. The Sawbwa of Yawnghwe was elected provisional president of the Burma Union. *C. I. E. D.*, Sept. 22/Oct. 5, 1947, p. 562.

24/October 17 GOLD. U. S. Department of State announced it had instructed its representative on the Tripartite Commission for the Restitution of Monetary Gold to urge a preliminary distribution by Oct. 15 of the looted gold recovered from third countries or monetary gold found in Germany. *D. S. B.*, Oct. 5, 1947, pp. 706-707. On Oct. 17 the Commission announced that \$144,526,500 worth of gold was being distributed immediately, of which \$104,150,250 had been allotted to Belgium and Luxembourg and \$40,376,250 to the Netherlands. Belgium and Luxembourg agreed to turn their shares over to France since they had received funds moved to France and later captured by the Germans. *Washington Post*, Oct. 18, 1947, p. 3. Text of statement: *D. S. B.*, Oct. 26, 1947, pp. 832-833. [Amounts are listed herein by weight, expressed in kilograms.]

26 GREAT BRITAIN—URUGUAY. Signed civil aviation agreement at Montevideo. *London Times*, Sept. 27, 1947, p. 4. Text: *Uruguay* No. 2 (1947), *Cmd.* 7249.

30 MEXICAN OIL. Under terms of the 1943 treaty Mexico made final payment to the United States in the amount of \$4,085,327.45 in connection with claims for expropriated properties. *N. Y. T.*, Oct. 1, 1947, p. 15; *D. S. B.*, Oct. 12, 1947, p. 747.

October, 1947

1 BULGARIA—UNITED STATES. Resumed diplomatic relations. *N. Y. T.*, Oct. 2, 1947, p. 1; *D. S. B.*, Oct. 12, 1947, p. 746.

3 REPARATIONS (German). At the close of the 12th session of the Inter-Allied Reparation Agency Assembly it was announced that equipment from 9 German war plants had been allocated to 15 countries. *N. Y. T.*, Oct. 4, 1947, p. 8.

3-November 8 ITALIAN COLONIES. Deputies of the Foreign Ministers of France, Great Britain, Russia and the United States began discussions in London Oct. 3 on the future disposition of the colonies. *N. Y. T.*, Oct. 4, 1947, p. 6. Decided Oct. 7 that all the Allied and Associated Powers which signed the Italian peace treaty plus Italy and Egypt should be heard. *N. Y. T.*, Oct. 8, 1947, p. 14. On Oct. 9 Emperor Haile Selassie maintained his country's claim to Eritrea and Italian Somaliland. *London Times*, Oct. 10, 1947, p. 4. It was decided Oct. 20 that a commission of investigation should visit the colonies to ascertain inhabitants' wishes. *London Times*, Oct. 21, 1947, p. 4. The commission left London Nov. 8 on a 7 months' tour of investigation. *N. Y. T.*, Nov. 9, 1947, p. 35.

- 5 COMMUNISTS. A new Communist international organization was announced at Moscow. The formation took place at a September meeting in Poland of Communists from Russia, France, Italy, Czechoslovakia, Poland, Rumania, Bulgaria, Yugoslavia and Hungary. Headquarters will be at Belgrade. Texts of communiqué, published in *Pravda*, resolution adopted at the conference, and manifesto: *N. Y. T.*, Oct. 6, 1947, p. 3. Delegates to the conference at Warsaw: *London Times*, Oct. 6, 1947, p. 4. The Communist Party of the United States announced Nov. 2 it had decided not to join. *N. Y. T.*, Nov. 3, 1947, p. 1.
- 5 EGYPT—GREAT BRITAIN. Egyptian Finance Minister announced that Great Britain had notified Egypt of its inability to pay in dollars the £2,500,000 debt to Egypt. *N. Y. T.*, Oct. 6, 1947, p. 4.
- 7-15 ARAB LEAGUE. Met at Beirut, Lebanon, to discuss the United Nations plan for partition of Palestine. *N. Y. T.*, Oct. 8, 1947, p. 13; *London Times*, Oct. 9, 1947, p. 4; Oct. 16, p. 3.
- 7/31 ITALIAN NAVY. U. S. Department of State announced Oct. 7 determination to return Italian naval vessels allotted under terms of the peace treaty. *D. S. B.*, Oct. 19, 1947, p. 769. Great Britain announced it too would return most of the ships allocated to it. *N. Y. T.*, Nov. 1, 1947, p. 3; *London Times*, Nov. 12, 1947, p. 3.
- 8 AUSTRIA—UNITED STATES. Signed interim air transport agreement. *D. S. B.*, Oct. 26, 1947, p. 834. Text: *D. S. B.*, Nov. 16, 1947, p. 960; *U. S. Aviation Reports* (Baltimore), Oct. 1947, pp. 446-451.
- 8 GERMAN OCCUPATION. Anglo-American conference on economic fusion of British and American zones opened in Washington. *N. Y. T.*, Oct. 9, 1947, p. 5. Members of delegations: *D. S. B.*, Oct. 19, 1947, p. 768.
- 8 PAKISTAN—UNITED STATES. Mirza Abdul Hassan Isphani presented his credentials as his country's first Ambassador. *D. S. B.*, Nov. 2, 1947, p. 886.
- 8-9 SCHOLARSHIPS. Board of Foreign Scholarships, appointed under terms of the Fulbright Act, held first meeting in Washington. Members: *D. S. B.*, Oct. 19, 1947, p. 779.
- 9 GREAT BRITAIN—SOUTH AFRICA. Signed agreement at Pretoria whereby South Africa will lend £80,000,000 in gold to Great Britain. *London Times*, Oct. 10, 1947, p. 4; *N. Y. T.*, Oct. 11, 1947, p. 1. Text: *Cmd.* 7230.
- 9/11 CHILE—YUGOSLAVIA. Chile issued Oct. 9 a report announcing expulsion of two Yugoslav diplomats. Text: *N. Y. T.*, Oct. 10, 1947, p. 4. Diplomatic relations were broken off by Yugoslavia on Oct. 11. *N. Y. T.*, Oct. 12, 1947, p. 1. Text of statement: p. 46.
- 10 ARGENTINA—RUMANIA. Signed trade treaty at Buenos Aires. *N. Y. T.*, Oct. 14, 1947, p. 7.
- 10 GOLD. United States, Great Britain and Italy signed protocol at London providing for immediate return to Italy of \$28,000,000 in gold, seized by Nazis and recovered by Allied troops in Italy. *N. Y. T.*, Oct. 11, 1947, pp. 1, 3; *London Times*, Oct. 11, 1947, p. 4. Text: *D. S. B.*, Oct. 19, 1947, p. 770; *G. B. T. S.* No. 79 (1947), *Cmd.* 7244.

- 12/17 BRIGA—TENDA. Plebiscite favored approval of their attachment to France as provided under terms of the Italian peace treaty. *N. Y. T.*, Oct. 13, 1947, p. 13. Three neutral observers were named by the President of the International Court of Justice. Names: *London Times*, Sept. 26, 1947, p. 8. On Oct. 17 the observers stated the vote was held in conformity with French law. *N. Y. T.*, Oct. 18, 1947, p. 3.
- 13 ARGENTINA—ITALY. Signed commercial and financial treaty at Buenos Aires. *N. Y. T.*, Oct. 14, 1947, p. 7.
- 13 GREAT BRITAIN—UNITED STATES. Signed an agreement at Washington concerning standardization of distance measuring equipment for civil aviation. Text: *T. I. A. S.* 1652.
- 14 FINLAND—SOVIET RUSSIA. Signed railway agreement providing for direct transport of passengers and cargo between Helsinki and Leningrad. *N. Y. T.*, Oct. 15, 1947, p. 21.
- 14 FRANCE—INDIA. Announcement was made that a ceremony had taken place the previous week at Frenchpet, Masulipatam in South India, symbolic of the French transfer to India of French "loges" in India. These "loges" are small plots of land in three provinces, sites of old French factories, now mostly disappeared, over which the French have continued to exercise certain rights and privileges. India Information Services [*Press Release*] (Washington), No. 3518.
- 15 HUNGARY—YUGOSLAVIA. Signed cultural agreement at Belgrade. *London Times*, Oct. 16, 1947, p. 3; *N. Y. T.*, Oct. 16, 1947, p. 20.
- 16 GERMAN NAVY. United States notified France that it would transfer to the French Government 31 former German naval ships and a floating dock, awarded to the United States by the tripartite naval commission set up by the Potsdam conference. *N. Y. T.*, Oct. 17, 1947, p. 7; *D. S. B.*, Oct. 26, 1947, p. 833.
- 16 REPARATIONS (German). Anglo-American military governments announced plans to dismantle 682 German war and industrial plants as reparations. *N. Y. T.*, Oct. 17, 1947, p. 8; *London Times*, Oct. 17, 1947, p. 4.
- 16 WAR CRIMES. Bulgarian Government handed to the U. S. Legation at Sofia a note detailing the *démarches* made for repatriation from Austria of Bulgarian war criminals. *N. Y. T.*, Oct. 25, 1947, p. 2.
- 17 BURMA—GREAT BRITAIN. Signed a treaty in London under whose terms Burma will become an independent nation completely outside the British Commonwealth. The transfer will probably take place Jan. 6, 1948. *N. Y. T.*, Oct. 18, 1947, p. 1. Summary of terms: *London Times*, Oct. 28, 1947, p. 4. Text: *Cmd.* 7240.
- 20-22 INTERNATIONAL BAR ASSOCIATION. Met in New York. 26 nations were represented. *N. Y. T.*, Oct. 21, 1947, p. 15. Voted to meet in 1948 at The Hague, probably late in August. *N. Y. T.*, Oct. 23, 1947, p. 6.
- 21 BRAZIL—SOVIET RUSSIA. Diplomatic relations were broken off by Brazil. *N. Y. T.*, Oct. 22, 1947, p. 1. Text of statement: p. 4. The United States will represent Brazilian interests in Moscow. p. 5.
- 21 BULGARIA—GREAT BRITAIN. Resumed diplomatic relations. *N. Y. T.*, Oct. 23, 1947, p. 6.

- 21 CHILE—CZECHOSLOVAKIA. Chile broke off diplomatic relations. *N. Y. T.*, Oct. 22, 1947, p. 1.
- 21 CHILE—SOVIET RUSSIA. Diplomatic relations were broken off by Chile. *N. Y. T.*, Oct. 22, 1947, p. 1. Text of note: p. 4.
- 22 GERMAN OCCUPATION. Great Britain and the Netherlands signed agreement at Geneva by which 3000 refugees from the British zone will be transferred to Holland for work in Dutch coal mines. *London Times*, Oct. 23, 1947, p. 3.
- 23 CREDITS, BELGIAN. Switzerland announced the immediate unfreezing of Belgian funds, blocked during the war. *N. Y. T.*, Oct. 24, 1947, p. 3.
- 23 CREDITS, LUXEMBOURGIAN. Switzerland announced immediate unfreezing of funds of Luxembourg, blocked during the war. *N. Y. T.*, Oct. 24, 1947, p. 3.
- 23 WAR CRIMES. The first mass trial of German war criminals before a Soviet military tribunal opened at Berlin. *N. Y. T.*, Oct. 24, 1947, p. 4.
- 23/November 13 NOBEL PRIZES. The prize in medicine was awarded jointly to the chemists, Drs. Carl and Gerty Cori of St. Louis, and to Dr. Bernardo Houssay of Buenos Aires. *N. Y. T.*, Oct. 24, 1947, pp. 1, 20. Recipients of prizes in literature, physics and chemistry were announced as André Gide of France, Sir Edward Appleton and Sir Robert Robinson, both of Great Britain. *N. Y. T.*, Nov. 14, 1947, pp. 1, 20, *London Times*, Nov. 14, 1947, p. 4.
- 26 ARGENTINA—BOLIVIA. Bolivian Foreign Minister announced that the two countries had agreed to arbitrate all disputes. *N. Y. T.*, Oct. 27, 1947, p. 8.
- 27 CHINA—UNITED STATES. Signed relief assistance agreement. Main provisions: *N. Y. T.*, Oct. 28, 1947, p. 11. Text: *D. S. B.*, Nov. 9, 1947, pp. 913-915.
- 28 FRANCE—UNITED STATES. Signed at Washington a supplementary industrial property rights agreement, amending the agreement of Apr. 4, 1947. *D. B. S.*, Nov. 9, 1947, p. 912.
- 29 BELGIUM—LUXEMBOURG—NETHERLANDS. Exchanged ratifications at Brussels of their customs union agreement (Benelux). *C. I. E. D.*, Oct. 27/Nov. 9, 1947, p. 633.
- 29 REPATRIATION. U. S. Chairman of the Allied Council for Japan reported that he had asked Russia to amend the arrangement calling for the return of 50,000 Japanese per month and to accept General MacArthur's offer to provide ships capable of returning all Japanese within 5 months. *N. Y. T.*, Oct. 30, 1947, p. 21.
- 31 NOBEL PEACE PRIZE. Awarded to the American Friends Service Committee of Philadelphia and the Service Council of the British Society of Friends. *N. Y. T.*, Nov. 1, 1947, pp. 1, 17; *London Times*, Nov. 1, 1947, p. 4.

UNITED NATIONS AND SPECIALIZED AGENCIES

June, 1947

- 9-13 BIOLOGICAL STANDARDIZATION. Committee of Experts met at Geneva under the auspices of the Interim Commission of the World Health Organization. Summary of work: *W. H. O. Chronicle*, 1947, Vol. 1, pp. 104-111.

July, 1947

- 3 U. N.—SOUTH AFRICA. South African Minister in Washington in a letter to the United Nations announced his Government's decision to continue the South West African mandate, instead of placing the area under trusteeship. Text: U. N. Doc. A/334. Partial text: *London Times*, Aug. 11, 1947, p. 8.

August, 1947

- 1-October 13 U. N. SECURITY COUNCIL (Indonesian Question). By an 8-0 vote the Council called on Netherlands and Indonesian Governments to cease hostilities forthwith and settle their disputes by arbitration. *N. Y. T.*, Aug. 2, 1947, pp. 1, 4. Text of resolution: p. 4; U. N. Doc. S/459; *U. N. W. B.*, Aug. 12, 1947, p. 216. Both Governments announced Aug. 3 and 4 that they would abide by the Council's order for cessation of hostilities. The Indonesian Government asked that the Council continuously supervise the execution of the cease-fire and laid down certain conditions for arbitration. *N. Y. T.*, Aug. 4, 1947, pp. 1, 2. Text of Governor General Van Mook's statement on the truce: p. 2. Text of Indonesian Premier's message to the Council: *N. Y. T.*, Aug. 5, 1947, p. 9; *London Times*, Aug. 5, 1947, p. 4; *U. N. W. B.*, Aug. 12, 1947, p. 223. Indonesian Republic informed United Nations Aug. 7 that it would accept the Council's decision on the dispute in which arbitration was recommended as the primary means of settlement. *U. N. W. B.*, Aug. 19, 1947, p. 245. Indonesian Government reported Aug. 9 to the Council that the Dutch had violated the cease-fire order. *N. Y. T.*, Aug. 10, 1947, p. 42. Council voted Aug. 12 by 8-3 to hear the Indonesian presentation in the dispute. *N. Y. T.*, Aug. 13, 1947, p. 1. The plea was presented by Sutan Sjahrir on Aug. 14. *N. Y. T.*, Aug. 15, 1947, p. 3. Dutch member of the Council denied on the 15th the jurisdiction of the United Nations. *N. Y. T.*, Aug. 16, 1947, p. 4; *U. N. W. B.*, Aug. 26, 1947, p. 277. Mr. Sjahrir asked the Council Aug. 19 to order U. N. arbitration. *N. Y. T.*, Aug. 20, 1947, p. 1. The proposal of Aug. 22 to hear representatives of East Indonesia and Borneo was not carried. *U. N. W. B.*, Sept. 2, 1947, p. 298. The Council did not adopt Aug. 24 the Belgian proposal empowering the International Court of Justice to rule on jurisdictional rights of the United Nations to take action. *U. N. W. B.*, Sept. 2, 1947, p. 297. Council decided Aug. 25 to offer to assist in the settlement of the dispute through a committee of the Council consisting of three members of the Council, each party to the dispute selecting one, and the third to be designated by the two so selected. *N. Y. T.*, Aug. 26, 1947, pp. 1, 13; *U. N. W. B.*, Sept. 2, 1947, p. 300. Text of resolution: p. 299; *N. Y. T.*, Aug. 26, p. 13. Adopted resolution Aug. 26 reminding the two countries of the U. N. Aug. 1 cease-fire order. *N. Y. T.*, Aug. 27, 1947, pp. 1, 12; *London Times*, Aug. 27, 1947, p. 3. Career consuls in Batavia were asked to report on the situation. *U. N. W. B.*, Sept. 2, 1947, p. 297. Texts of resolutions adopted Aug. 25 and 26: *D. S. B.*, Oct. 12, 1947, pp. 731-732. On Aug. 27 the Sultan of West Borneo and the President of East Indonesia released text of their protest to the Council against "legal barriers" which prevented their being heard in the negotiations. *N. Y. T.*, Aug. 28, 1947, p. 7. The Netherlands Government announced Aug. 29 it had accepted the Council's offer to aid in ending strife, adding that it believed the Council incompetent to deal with the question and maintaining that it alone is responsible for order in Indonesia. *N. Y. T.*, Aug. 30, 1947, p. 8. Indonesian Republic accepted Aug. 30. *N. Y. T.*, Aug. 31, 1947, p. 9. The Dutch representative submitted documentary material Sept. 11 for circulation in the Council. Text: U. N. Doc. S/553. On Sept. 18 Australia and Belgium were selected by Indonesia and

the Netherlands and the United States was chosen the third member of the Committee. *D. S. B.*, Oct. 12, 1947, p. 731. A telegraphed summary of the Consular Commission's report was received Oct. 13 by the Council. Summary of main points of the report: *U. N. W. B.*, Oct. 21, 1947, p. 515. Text of full report: *U. N. Doc. S/586*. Maps: *Docs. S/586/Add. 1* and *Add. 2*.

- 4-13 LABOR STATISTICIANS. Sixth International Conference of Labor Statisticians met at Montreal under the auspices of the I. L. O. *U. N. W. B.*, Aug. 12, 1947, p. 214. U. S. delegation: *D. S. B.*, Aug. 3, 1947, pp. 214-215. The conference closed Aug. 13. *U. N. W. B.*, Aug. 26, 1947, p. 270.

- 4-September 15 U. N. SECURITY COUNCIL (Greek Question). Voted down (9-2) the Soviet resolution condemning the Greek Government for Balkan border troubles and calling for withdrawal of foreign military personnel from Greece. *N. Y. T.*, Aug. 5, 1947, p. 15. U. S. representative introduced Aug. 12 a resolution ordering Albania, Bulgaria and Yugoslavia "to cease and desist from rendering any further assistance or support in any form to the guerrillas fighting against the Greek Government." *N. Y. T.*, Aug. 13, 1947, p. 1. Text of resolution: p. 6; *D. S. B.*, Aug. 24, 1947, pp. 362-364; *U. N. Doc. S/486*. On Aug. 19 Russia vetoed two attempts to order Greece, Albania, Bulgaria and Yugoslavia to try to settle their differences and to declare the last three were threatening peace by aiding Greek guerrillas. *N. Y. T.*, Aug. 20, 1947, p. 1. U. S. representative's letter of Sept. 11 to chairman of the Council suggested that the Security Council seek a recommendation from the Assembly. *N. Y. T.*, Sept. 12, 1947, p. 11. Text: *U. N. Doc. S/550*. Russia used the veto twice Sept. 15 to block the plan. The Council voted to drop the question from its agenda by 9-2 vote, with Russia and Poland abstaining, and directed the Secretary General to place records and documents before the General Assembly. *N. Y. T.*, Sept. 16, 1947, pp. 1, 4; *U. N. W. B.*, Sept. 23, 1947, p. 377.

- 5 U. N. ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST. Terms of reference for the Commission, adopted at the 4th session of the U. N. Economic and Social Council, Mar. 28, 1947, were amended at its 5th session on Aug. 5. Text: *U. N. Doc. E/CN.11/29*.

- 5-17 U. N. ECONOMIC AND SOCIAL COUNCIL. Decided that certain dependent areas could participate in the work of the Council as "associate members." *U. N. W. B.*, Aug. 12, 1947, p. 230. Voted Aug. 11 to establish an *ad hoc* Committee to study economic problems of Latin American countries. Text of resolution, with terms of reference: *D. S. B.*, Oct. 19, 1947, p. 763; *U. N. Doc. E/573*, pp. 8-9. By a vote of 8-2, with 8 abstentions, voted not to undertake a world oil study. *N. Y. T.*, Aug. 13, 1947, p. 33. At final meeting which closed in the early hours of Aug. 17, the Council voted agreements with several international agencies. *N. Y. T.*, Aug. 17, 1947, p. 35; Aug. 18, p. 6. Action taken on various subjects: *U. N. W. B.*, Aug. 19, 1947, pp. 251-254; Aug. 26, pp. 287-290. Texts of resolutions adopted: *U. N. Doc. E/573*. Disposition of agenda items and check-list of documents: *U. N. Doc. E/INF/16*. Text of report to the General Assembly for the period Oct. 3, 1946-Aug. 17, 1947: *U. N. Doc. A/382*. Text of report on the session: *D. S. B.*, Oct. 26, 1947, pp. 812-819.

- 5-September 10 U. N. SECURITY COUNCIL (Egyptian Question). Egyptian Prime Minister in a speech before the Council on Aug. 5 asked that it order termination of British administration of Sudan and evacuation of British troops.

- British reply stated that the treaty authorizing the administration and stationing of troops in the area expires in 1956. *N. Y. T.*, Aug. 6, 1947, pp. 1, 3; *London Times*, Aug. 6, 1947, p. 4; *U. N. W. B.*, Aug. 19, 1947, p. 239. On Sept. 10 no decision had been reached on the case which will remain on the agenda. *N. Y. T.*, Sept. 11, 1947, p. 11; *U. N. W. B.*, Sept. 23, 1947, p. 387.
- 7-28 I. B. R. D.—LOANS. On Aug. 7 the Bank signed an agreement with the Netherlands providing for a loan of \$195,000,000. *N. Y. T.*, Aug. 8, 1947, pp. 1, 6. Text: I. B. R. D. *Loan* No. 2 Ne. On the 22nd the Bank announced a 25-year loan of \$40,000,000 to Denmark. *N. Y. T.*, Aug. 23, 1947, p. 5; *U. N. W. B.*, Sept. 2, 1947, p. 294. Text of agreement: I. B. R. D. *Loan* No. 3 De. The Bank and Luxembourg signed agreement the 28th providing for a loan of \$12,000,000. Text: I. B. R. D. *Loan* No. 4 Lu.
- 11 U. N. SECRETARY GENERAL. Mr. Lie's report to the General Assembly, covering the year ended June 30, 1947, was made public. *N. Y. T.*, Aug. 12, 1947, p. 1: Text of Introduction p. 4. Text of report: U. N. *Doc.* A/315; *G.A. (II) O.R.* Suppl. No. 1.
- 11/October 9 U. N. ECONOMIC COMMISSION FOR LATIN AMERICA. *Ad hoc* Committee to consider the establishment of an economic commission for Latin America was set up by the Economic and Social Council by resolution of Aug. 11, 1947. Text, including terms of reference: *D. S. B.*, Oct. 19, 1947, p. 763; U. N. *Doc.* E/573, pp. 8-9. The *ad hoc* Committee held its first meeting at Lake Success on Oct. 9. Elected Carlos E. Stolk of Venezuela as chairman. U. N. *Doc.* E/AC.21/SR.1.
- 12-15 U. N.—INDIA. U. N. Assistant Secretary General for Legal Affairs ruled that Pakistan would be considered a new state and would have to apply for membership according to the usual procedure. The Dominion of India will continue as an original member and will be asked to issue new credentials to its representative. *N. Y. T.*, Aug. 13, 1947, p. 11. Dr. Padmanabha Pillai presented his credentials as the representative of Hindu India. *N. Y. T.*, Aug. 14, 1947, p. 18. Pakistan applied for membership Aug. 15. *N. Y. T.*, Aug. 17, 1947, p. 36.
- 18-27 U. N. POPULATION COMMISSION. Second session was held at Lake Success. *N. Y. T.*, Aug. 19, 1947, p. 3; *U. N. W. B.*, Aug. 26, 1947, p. 270. Text of its report to the Economic and Social Council: U. N. *Doc.* E/571. Disposition of agenda items and check list of documents: U. N. *Doc.* E/CN.9/12.
- 18-October 1 U. N.—VETOS. The 12th-14th vetoes were used by Russia in rejecting membership applications of Ireland, Portugal and Trans-Jordan. *N. Y. T.*, Aug. 19, 1947, p. 1; *U. N. W. B.*, Sept. 2, 1947, p. 308. 15th and 16th vetoes were used by Russia in connection with the Greek question. 17th and 18th vetoes blocked membership for Italy and Austria. France vetoed proposal to appoint an 11-nation commission on Indonesia. 20th veto was Russia's on the Greek question. 21st and 22d vetoes were used by Russia against admitting Italy and Finland as members. *N. Y. T.*, Aug. 20, 1947, pp. 1, 3; Aug. 22, p. 1; Aug. 26, p. 1; Sept. 16, pp. 1, 4; Oct. 2, p. 13; *U. N. W. B.*, Oct. 7, pp. 464-465.
- 22 DIPLOMATIC IMMUNITY. By Executive Order 9887 President Truman designated the Preparatory Commission of the International Refugee Organization and its successor, the International Refugee Organization, as eligible to enjoy privileges, exemptions and immunities conferred by the International Organizations Immunities Act of Dec., 1945. *D. S. B.*, Aug. 31, 1947, p. 438.

- 22/September 16 U. N. BALKAN INVESTIGATING COMMISSION. U. S. Department of State released two reports Aug. 22, summarizing results of the investigations by the U. N. Subsidiary Group concerning violations of the northern Greek frontier. *D. S. B.*, Aug. 31, 1947, p. 427. Text: Department of State [*Press Notice*] Aug. 27, 1947, No. 689. Subsidiary Group was recalled Sept. 16 and will cease to exist. *N. Y. T.*, Sept. 17, 1947, p. 6; *U. N. W. B.*, Sept. 23, 1947, p. 385.
- 22-October 30 TRADE AND EMPLOYMENT CONFERENCE. Approved Draft Charter for the International Trade Organization. Signed on Oct. 30 Final Act and General Agreement. *U. N. W. B.*, Nov. 11, 1947, p. 633-634. List of signatories to Agreement: *London Times*, Nov. 18, 1947, p. 4. Analysis of Agreement: Dept. of State *Commercial Policy Ser.* No. 109. Belgium, Canada, Luxembourg, Netherlands, United States and Great Britain signed a protocol of provisional application. France and Australia signed the protocol Nov. 13 at Lake Success. *N. Y. T.*, Nov. 14, 1947, p. 14. Texts of Final Act, General Agreement, Schedules of tariff concessions and Protocol of provisional application: U. N. Publication Sales No. 1947.II.10, v. 1-4. Texts, with Canadian schedules only: Canada *Treaty Ser.* 1947, Nos. 27 and 27A. Report of the second session of the Conference: U. N. Doc. E/PC/T/186.
- 25-September 11 F. A. O. Third Conference opened at Geneva Aug. 25. Elected F. D. Wahlen of Switzerland as chairman. *N. Y. T.*, Aug. 26, 1947, p. 13; *London Times*, Aug. 26, 1947, p. 3. U. S. delegates: *N. Y. T.*, Aug. 12, 1947, p. 4; *D. S. B.*, Aug. 24, 1947, p. 370. Admitted El Salvador, Austria, Finland and Siam on Aug. 26 and Pakistan on Aug. 27. *U. N. W. B.*, Sept. 2, 1947, p. 294 and Sept. 9, p. 318. Burma was admitted Sept. 3. *U. N. W. B.*, Sept. 16, 1947, p. 342. At final session on Sept. 11 approved establishment of World Food Council composed of representatives of 18 countries, as an integral part of F. A. O. Renamed Sir John Boyd Orr as Director General and elected Viscount Bruce of Australia as Chairman of the Council. *U. N. W. B.*, Sept. 23, 1947, pp. 382-384. Summary of the Conference: F. A. O. *Information Service Bulletin*, Oct. 20, 1947; *D. S. B.*, Nov. 30, 1947, pp. 1015-1021.
- 28-September 4 U. N. STATISTICAL COMMISSION. Second session was held at Lake Success. *U. N. W. B.*, Sept. 9, 1947, p. 318 and Sept. 16, p. 341. Summary of recommendations: *U. N. W. B.*, Sept. 23, 1947, pp. 400-401. Text of report: U. N. Doc. E/577.
- 28-September 13 U. N. SOCIAL COMMISSION. Second session was held at Lake Success. *U. N. W. B.*, Sept. 9, 1947, p. 318. Members: p. 326. Summary of meeting: *U. N. W. B.*, Sept. 23, 1947, pp. 377-378. Text of report: U. N. Doc. E/578.
- 30-September 13 W. H. O. Fourth session of the Interim Commission of the World Health Organization was held at Geneva. *U. N. W. B.*, Sept. 23, 1947, pp. 402-403. Approved draft agreement on relations with the United Nations and voted to hold next session at Geneva, Jan. 22-Feb. 7, 1948. Text of agreement: U. N. Doc. A/348. Summary of work of the session: W. H. O. *Chronicle*, 1947, Vol. 1, pp. 121-139.
- 81 U. N. PALESTINE COMMITTEE. Special Committee on Palestine adopted report recommending termination of the British mandate, partition into 2 independent states and permanent administration of the city of Jerusalem by the United Nations. A minority working group of Indian, Iranian and Yugoslav repre-

representatives recommended an independent federal state. Australia abstained from voting. *N. Y. T.*, Sept. 1, 1947, p. 1. Summary: p. 2; *London Times*, Sept. 1, 1947, p. 4; *U. N. W. B.*, Sept. 9, 1947, pp. 327-333. Text, except annexes and appendix: *N. Y. T.*, Sept. 9, 1947, pp. 33-40. Full text of report: *U. N. Doc. A/364* and Adda.; *G. A. (II) O. R.* Suppl. No. 11. Text of preface, introduction and recommendations: *D. S. B.*, Sept. 21, 1947, pp. 546-561.

September, 1947

- 1-October 20 U. N. Indonesian Committee. Announcement was made Sept. 1 that the Netherlands had nominated Belgium to the 8-nation committee [authorized by the Security Council resolution of Aug. 25]. *N. Y. T.*, Sept. 2, 1947, p. 10; *U. N. W. B.*, Sept. 16, 1947, p. 341. Australia was nominated by the Indonesian Republic on Sept. 6. *N. Y. T.*, Sept. 7, 1947, p. 45. Announcement was made the 18th of U. S. acceptance of invitation to become the third member. *N. Y. T.*, Sept. 19, 1947, p. 17; *London Times*, Sept. 20, 1947, p. 4; *U. N. W. B.*, Sept. 30, 1947, p. 409. Frank P. Graham was appointed U. S. member. *N. Y. T.*, Oct. 2, 1947, p. 10; *D. S. B.*, Oct. 12, 1947, p. 731. The Committee held informal meeting at Lake Success on Oct. 8, and agreed to hold its first formal meeting in Sydney and to proceed there immediately. *U. N. W. B.*, Oct. 21, 1947, p. 510. First formal meeting was held Oct. 20 at Lapstone, near Sydney. *London Times*, Oct. 21, 1947, p. 3; *U. N. W. B.*, Nov. 4, 1947, p. 599. Agreed that the position of chairman should rotate weekly, starting with the Australian member. *U. N. W. B.*, Oct. 28, 1947, p. 546.
- 5 U. N. SECURITY COUNCIL. Submitted to the General Assembly its 193-page report covering 12 months' activities through July 15. *N. Y. T.*, Sept. 6, 1947, p. 9. Text: *U. N. Doc. A/366*.
- 11 U. N. ATOMIC ENERGY COMMISSION. Approved its second report. *N. Y. T.*, Sept. 12, 1947, p. 2; *U. N. W. B.*, Sept. 23, 1947, p. 377. Text of report: *U. N. Docs. AEC/26* and *S/557*; Dept. of State, *United States—United Nations Report Ser. No. 11*. Summary: *U. N. W. B.*, Sept. 23, 1947, pp. 405-408.
- 11-17 I. B. R. D. Second annual meeting of the governors of the Bank was held in London. *N. Y. T.*, Sept. 12, 1947, p. 1; *London Times*, Sept. 18, 1947, p. 4. Approved Finnish application for membership and accepted an agreement defining the Bank's relationship with the United Nations. *London Times*, Sept. 17, 1947, p. 4; *N. Y. T.*, Sept. 17, 1947, p. 6. Text of Agreement: *U. N. Docs. A/349* and *E/573*, pp. 76-81.
- 11-17 I. M. F. Second annual meeting of the governors of the Fund was held in London. *N. Y. T.*, Sept. 12, 1947, p. 1; *London Times*, Sept. 18, 1947, p. 4. Short report on the meeting: *C. I. E. D.*, Sept. 8/21, 1947, pp. 555-556.
- 16-October 31 U. N. GENERAL ASSEMBLY. Opened second session Sept. 16 and elected Oswaldo Aranha of Brazil as chairman. *N. Y. T.*, Sept. 17, 1947, p. 1; *London Times*, Sept. 17, 1947, p. 4; *U. N. W. B.*, Sept. 23, 1947, p. 377. List of delegations: *U. N. Publication Sales No. 1947.I.21* and corrigendum. U. S. delegation: *D. S. B.*, Sept. 21, 1947, pp. 544-545. Agenda as adopted: *G. A. (II) J.*, Sept. 26, 1947, pp. 4-9. Documentation of agenda: *U. N. Doc. A/INF/10*. In address on Sept. 17 Secretary of State Marshall proposed partial elimination of the veto and the creation of a standing committee to "consider situations and disputes impairing friendly relations." Text:

- N. Y. T.*, Sept. 18, 1947, p. 3; Dept. of State *United States-United Nations Information Ser.* No. 24. Greece appealed on Sept. 19 to the Assembly for urgent action to block neighboring countries' efforts to set up a Communist dictatorship in Athens. *N. Y. T.*, Sept. 20, 1947, p. 4. Established Sept. 23 an *ad hoc* committee of all members to deal with the Palestine Committee's partition recommendations. *U. N. W. B.*, Sept. 30, 1947, p. 428; *N. Y. T.*, Sept. 24, 1947, p. 5. Elected Canada and Argentina to the Security Council on Sept. 30. *N. Y. T.*, Oct. 1, 1947, p. 1. Pakistan's and Yemen's delegations were seated as the 56th and 57th members. pp. 5, 9; *U. N. W. B.*, Oct. 7, 1947, p. 447. Elected on Oct. 1 Brazil, United Kingdom, Denmark, Soviet Russia, Australia and Poland to the Economic and Social Council, the terms to begin Jan., 1948. *U. N. W. B.*, Oct. 7, 1947, p. 452. Approved design for flag on Oct. 20. *N. Y. T.*, Oct. 21, 1947, p. 13. Approved Oct. 21 the establishment of a Balkan commission to watch against violations of Greek independence by its neighbors. *N. Y. T.*, Oct. 22, 1947, pp. 1, 8; *U. N. W. B.*, Oct. 28, 1947, p. 547. Text of resolution: *D. S. B.*, Oct. 26, 1947, pp. 823-824; *U. N. Doc.* A/409 and Corr. 1. Alan G. Kirk was appointed U. S. member. *D. S. B.*, Nov. 16, 1947, p. 949. Approved transfer to the United Nations of the functions and powers of the League of Nations under international conventions on traffic in women, children and obscene publications. *U. N. W. B.*, Oct. 28, 1947, p. 558. Text of resolution: *U. N. Doc.* A/412. Defeated on Oct. 31 the Yugoslav resolution calling for extradition of all persons accused of being war criminals and traitors to the countries in which the crimes were committed. Approved a British substitute calling on countries demanding surrender of alleged criminals to furnish evidence to establish a *prima facie* case of guilt. *U. N. W. B.*, Nov. 11, 1947, pp. 624-626. Text of resolution: *U. N. Doc.* A/425, p. 3; *N. Y. T.*, Nov. 1, 1947, p. 4. Designated Oct. 24 as United Nations Day. *N. Y. T.*, Nov. 1, 1947, p. 6. Text of resolution: *U. N. Doc.* A/413. Approved United Nations-United States headquarters agreement. Text: *U. N. Doc.* A/427; pp. 9-18. Approved Italy's application for membership in the International Civil Aviation Organization on Oct. 31. *N. Y. T.*, Nov. 2, 1947, p. 59; *U. N. W. B.*, Nov. 11, 1947, p. 632.
- 17 U. N. SPECIALIZED OR AFFILIATED AGENCIES. Lists of member nations of the agencies were issued. Text: *U. N. Press Release* EC/258.
- 18 U. N. R. R. A. Director General L. W. Rooks announced transfer of funds to four international organizations, as follows: \$1,500,000 to World Health Organization; \$5,000,000 to International Children's Emergency Fund; \$1,000,000 to International Refugee Organization and \$500,000 to Food and Agriculture Organization. *N. Y. T.*, Sept. 19, 1947, p. 13; *U. N. W. B.*, Sept. 30, 1947, p. 410.
- 24 U. N. MISSION TO SAMOA. U. N. Mission to Western Samoa sent report to the Trusteeship Council. Text: *U. N. Doc.* T/46 and Add. 1. Summary: *U. N. W. B.*, Oct. 21, 1947, pp. 542-543.
- 26-October 22 U. N. GENERAL ASSEMBLY (Palestine). Speaking at a meeting of the U. N. General Assembly's *ad hoc* Committee on Palestine the British Colonial Secretary announced his country's decision to lay down its mandate. Text of statement: *N. Y. T.*, Sept. 27, 1947, p. 2; *London Times*, Sept. 27, 1947, p. 4; British Information Services [*Press Release*] G. 502. Text of Arab spokesman's statement of Sept. 29 rejecting partition proposal of the Special Committee on Palestine: *N. Y. T.*, Sept. 30, 1947, pp. 14, 15. The Chairman of

the American section of the Jewish Agency for Palestine told the Committee Oct. 2 that the Agency accepted reluctantly the partition plan. *N. Y. T.*, Oct. 3, 1947, p. 1. Text of statement: p. 20. Summary: *London Times*, Oct. 3, 1947, p. 4. Text of U. S. statement favoring partition: *N. Y. T.*, Oct. 12, 1947, p. 64; *D. S. B.*, Oct. 19, 1947, pp. 761-762. On Oct. 13 the Russian representative announced his country's support in principle of partition plan. *London Times*, Oct. 14, 1947, p. 4; *N. Y. T.*, Oct. 14, 1947, p. 1. Text: p. 8. Final Jewish and Arab appeals were presented Oct. 18. Text of Jewish statement and excerpts from Arab address: *N. Y. T.*, Oct. 19, 1947, pp. 26, 27. The Committee decided Oct. 22 to set up 2 subcommittees to study the proposals for partition and for a unitary state. *U. N. W. B.*, Oct. 28, 1947, p. 562; *N. Y. T.*, Oct. 23, 1947, p. 7.

October, 1947

- 7 U. N.—SAN MARINO. San Marino's application for membership was rejected by the United Nations Secretariat because the form of application was incorrect. *N. Y. T.*, Oct. 8, 1947, p. 14.
- 7-8 I. C. E. F. At meetings of the Executive Board of the International Children's Emergency Fund it was decided to move headquarters to New York. *U. N. W. B.*, Oct. 21, 1947, p. 510. Text of report to the 6th session of the U. N. Economic and Social Council: *U. N. Doc. E/590*.
- 21 U. N.—FLAG. The newly adopted flag was raised for the first time. The design consists of the world in white on a light blue background. Picture: *N. Y. T.*, Oct. 22, 1947, p. 9.
- 21-November 1 I. R. O. Fourth part of 1st session of the Preparatory Commission met at Geneva. *U. N. W. B.*, Oct. 28, 1947, p. 546. Adopted a budget totaling \$155,645,000. *London Times*, Nov. 3, 1947, p. 3. Session ended Nov. 1. *U. N. W. B.*, Nov. 11, 1947, p. 614; *N. Y. T.*, Oct. 25, 1947, p. 2. Text of report of the meeting: I. R. O. *Doc. PREP/154/Rev. 1*. Article: *D. S. B.*, Jan. 4, 1948, pp. 21-22.
- 27-November 8 LABOR CONFERENCE. Preparatory Asian regional conference of the I. L. O. opened Oct. 27 at New Delhi with delegates present from 20 countries. *N. Y. T.*, Oct. 28, 1947, p. 2. Main points on the agenda: *London Times*, Oct. 28, 1947, p. 3. U. S. observers: *D. S. B.*, Nov. 9, 1947, p. 901. The conference adopted a resolution demanding "recognition of the principle of freedom of association." Session closed Nov. 8. *N. Y. T.*, Nov. 9, 1947, p. 7. List of other resolutions adopted: *U. N. W. B.*, Nov. 18, 1947, p. 650.
- 27-November 11 I. E. F. O. International Emergency Food Council opened 5th session in Washington with 35 delegates present. *N. Y. T.*, Oct. 28, 1947, p. 1. Abstract of Secretary General's report: p. 12. At final meeting the Council voted its dissolution with its functions to be absorbed by an F. A. O. Committee. *N. Y. T.*, Nov. 12, 1947, p. 9. Text of resolution of transfer: *Press Release IEFC 62*.
- 31 I. C. A. O.—ITALY. Italy's membership application was approved by the U. N. General Assembly. *N. Y. T.*, Nov. 2, 1947, p. 59; *U. N. W. B.*, Nov. 11, 1947, p. 613.
- 1 U. N. SECURITY COUNCIL. Membership applications of Bulgaria, Hungary, and Rumania failed to receive necessary majority, those of Finland and Italy vetoed by Russia. *U. N. W. B.*, Oct. 14, 1947, p. 474.

MULTIPARTITE CONVENTIONS

AVIATION CONVENTION. [ICAO Constitution]. Chicago, Dec. 7, 1944.

Ratification:

Haiti. ICAO *Monthly Bulletin*, Oct., 1947, p. 2.

Ratification deposited:

Colombia. Oct. 31, 1947. U. N. *Press Release* ICAO 40.

El Salvador. June 11, 1947. ICAO *Monthly Bulletin*, Aug. 1947, p. 1.

AVIATION CONVENTION. [I. C. A. O. Constitution]. Chicago, Dec. 7, 1944. Protocol of Amendment. Montreal, May 27, 1947.

Text: *Cong. Rec.* (daily) July 11, 1947, p. 8865; *D. S. B.*, July 27, 1947, p. 177.

COMMERCIAL AVIATION CONVENTION. Havana, Feb. 20, 1928.

Denunciation:

United States (effective Nov. 29, 1947). *D. S. B.*, Sept. 21, 1947, p. 599; *U. S. Aviation Reports*, June, 1947, p. 264.

FOOD AND AGRICULTURAL ORGANIZATION. Constitution. Quebec, Oct. 16, 1945.

Ratification announced:

El Salvador. *N. Y. T.*, Aug. 26, 1947, p. 13; *F. A. O. Information Service Bulletin*, Aug. 22, 1947, p. 2.

HEALTH ORGANIZATION. Constitution, New York, July 22, 1946.

Countries which have approved, in addition to those listed hitherto:

Ethiopia, Haiti, Saudi Arabia, Sweden, Turkey. U. N. *Press Release* H/136.

Ratifications announced:

Iraq and Siam. Sept. 29, 1947. *N. Y. T.*, Sept. 30, 1947, p. 8; *U. N. W. B.*, Oct. 7, 1947, p. 442.

South Africa. Aug. 7, 1947. *U. N. W. B.*, Aug. 19, 1947, p. 238.

Sweden. Sept. 6, 1947. U. N. *Press Release* H/122; *U. N. W. B.*, Sept. 16, 1947, p. 342.

Ratification deposited:

Norway. Aug. 18, 1947. *U. N. W. B.*, Aug. 26, 1947, p. 270.

Status as of Sept. 15, 1947: *W. H. O. Chronicle*, 1947, Vol. 1, p. 116.

INTER-AMERICAN RECIPROCAL ASSISTANCE. Rio de Janeiro, Sept. 2, 1947.

Text (English): *D. S. B.*, Sept. 21, 1947, pp. 565-567; *N. Y. T.*, Aug. 31, 1947, p. 26; *P. A. U. Congress and Conference Ser.* No. 53; *Cong. Rec.* (daily) Dec. 4, 1947, pp. 11134-11136.

Text (Spanish): *P. A. U. Serie sobre Congresos y Conferencias* No. 52.

Text (Portuguese): *Conference Diario das Sessões*, No. 16, pp. 182-185.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. Washington, Dec. 27, 1945.

Signature:

Australia. Aug. 5, 1947. *U. N. W. B.*, Aug. 12, 1947, p. 214; *D. S. B.*, Aug. 17, 1947, p. 328.

INTERNATIONAL MONETARY FUND. Washington, Dec. 27, 1945.

Signature:

Australia. Aug. 5, 1947. *U. N. W. B.*, Aug. 12, 1947, p. 214; *D. S. B.*, Aug. 17, 1947, p. 328.

NARCOTIC DRUGS. Lake Success, Dec. 11, 1946.

Ratification:

United States. July 15, 1947.

Ratification deposited:

United States. Aug. 12, 1947.

Promulgation:

United States. Oct. 14, 1947. *D. S. B.*, Oct. 26, 1947, p. 825.

OBSOLETE PUBLICATIONS. Geneva, Sept. 12, 1923. Protocol of Amendment. Lake Success, Nov. 12, 1947.

Signatures (17) limited to original signatories of the convention. *U. N. W. B.*, Nov. 25, 1947, p. 682; *N. Y. T.*, Nov. 13, 1947, p. 12.

PEACE TREATY (Bulgarian). Paris, Feb. 10, 1947.

Promulgation:

United States. Sept. 25, 1947. *D. S. B.*, Oct. 19, 1947, p. 771.

Ratifications deposited (at Moscow):

Great Britain, Soviet Russia, United States. Sept. 15, 1947. *N. Y. T.*, Sept. 16, 1947, p. 10; *London Times*, Sept. 16, 1947, p. 4; *D. S. B.*, Oct. 19, 1947, p. 771.

Signature:

Greece. Oct. 22, 1947. *London Times*, Oct. 23, 1947, p. 4.

Came into force Sept. 15, 1947. *D. S. B.*, Oct. 19, 1947, p. 771.

PEACE TREATY (Finnish). Paris, Feb. 10, 1947.

Ratifications deposited (at Moscow):

Great Britain and Soviet Russia. Sept. 15, 1947. *N. Y. T.*, Sept. 16, 1947, p. 10; *London Times*, Sept. 16, 1947, p. 4.

PEACE TREATY (Hungarian). Paris, Feb. 10, 1947.

Promulgation:

United States. Sept. 25, 1947. *D. S. B.*, Oct. 19, 1947, p. 771.

Ratification:

Greece. Oct. 28, 1947. *D. S. B.*, Nov. 30, 1947, p. 1058.

Ratifications deposited (at Moscow):

Great Britain, Soviet Russia and United States. Sept. 15, 1947. *D. S. B.*, Oct. 19, 1947, p. 771; *N. Y. T.*, Sept. 16, 1947, p. 10; *London Times*, Sept. 16, 1947, p. 4.

Came into force, Sept. 15, 1947. *D. S. B.*, Oct. 19, 1947, p. 771.

PEACE TREATY (Italian). Paris, Feb. 10, 1947.

Promulgation:

United States. Sept. 25, 1947. *D. S. B.*, Oct. 19, 1947, p. 771.

Ratifications:

Greece. Oct. 28, 1947. *D. S. B.*, Nov. 30, 1947, p. 1058.

Italy. Sept. 6, 1947. *N. Y. T.*, Sept. 7, 1947, p. 28; *London Times*, Sept. 8, 1947, p. 3.

Ratifications deposited (at Paris):

France, Great Britain, Soviet Russia and United States. Sept. 15, 1947. *N. Y. T.*, Sept. 16, 1947, p. 10; *London Times*, Sept. 16, 1947, p. 4; *D. S. B.*, Oct. 19, 1947, p. 771.

Came into force Sept. 15, 1947. *D. S. B.*, Oct. 19, 1947, p. 771.

PEACE TREATY (Rumanian). Paris, Feb. 10, 1947.

Promulgation:

United States. Sept. 25, 1947. *D. S. B.*, Oct. 19, 1947, p. 771.

Ratifications deposited (at Moscow):

Great Britain, Soviet Russia and United States. Sept. 15, 1947. *N. Y. T.*, Sept.

16, 1947, p. 10; *London Times*, Sept. 16, 1947, p. 4; *D. S. B.*, Oct. 19, 1947, p. 771.

Came into force Sept. 15, 1947. *D. S. B.*, Oct. 19, 1947, p. 771.

PRIVILEGES AND IMMUNITIES, UNITED NATIONS. London, Feb. 13, 1946.

Ratification deposited:

Norway. Aug. 18, 1947. *U. N. W. B.*, Aug. 26, 1947, p. 270.

PUBLIC HEALTH OFFICE. Protocol. New York, July 22, 1946.

Ratification deposited:

Norway. Aug. 18, 1947. *U. N. W. B.*, Aug. 26, 1947, p. 270.

RADIO REGULATIONS AGREEMENT. Atlantic City, Oct. 2, 1947.

Signed by 78 nations. *N. Y. T.*, Oct. 3, 1947, p. 50.

REFUGEE ORGANIZATION. Constitution. Flushing Meadow, N. Y., Dec. 15, 1946.

Ratifications:

Canada. Aug. 7, 1947. *U. N. W. B.*, Aug. 19, 1947, p. 238.

Dominican Republic. *U. N. W. B.*, Nov. 4, 1947, p. 578.

Guatemala. Aug. 12, 1947. *U. N. W. B.*, Aug. 19, 1947, p. 238.

Ratification deposited:

Norway. Aug. 18, 1947. *U. N. W. B.*, Aug. 26, 1947, p. 270.

TELECOMMUNICATIONS CONVENTION. Atlantic City, Oct. 2, 1947.

Signed by 78 nations. *N. Y. T.*, Oct. 3, 1947, p. 50.

TRADE AND TARIFF. General Agreement. Geneva, Oct. 30, 1947.

Signatures: 23 nations.

Text: *U. N. Publication Sales No. 1947.II.10.*

TRADE AND TARIFF. Protocol. Geneva, Oct. 30, 1947.

Signatures:

Belgium, Canada, Luxembourg, United States, Netherlands and Great Britain.

N. Y. T., Oct. 31, 1947, p. 10.

Text: *U. N. Publication Sales No. 1947.II.10, v. 4.*

U. N. E. S. C. O. Constitution. London, Nov. 16, 1945.

Ratification deposited:

Cuba. Sept. 25, 1947. *N. Y. T.*, Sept. 26, 1947, p. 12.

UNITED NATIONS CHARTER. San Francisco, June 26, 1945.

Signatures:

Pakistan and Yemen. Sept. 30, 1947. *U. N. W. B.*, Oct. 7, 1947, p. 447.

WHALING. Supplementary Protocol. London, Nov. 26, 1945.

Promulgation:

United States. Aug. 18, 1947. *D. S. B.*, Sept. 14, 1947, p. 526.

WHALING. Supplementary Protocol. London, March 3, 1947.

Ratification:

United States. July 18, 1947.

Ratification deposited:

United States. Aug. 1, 1947.

Promulgation:

United States. Aug. 18, 1947. *D. S. B.*, Sept. 14, 1947, p. 526.

Text: *T. I. A. S. 1634.*

WHITE SLAVE TRADE. Geneva, Sept. 30, 1921, and Oct. 11, 1933. Protocol of Amendment. Lake Success, Nov. 12, 1947.

Signed by 17 nations, the signatories being limited to nations which signed the earlier conventions. *U. N. W. B.*, Nov. 25, 1947, p. 682; *N. Y. T.*, Nov. 13, 1947, p. 12.

DOROTHY R. DART

JUDICIAL DECISIONS

RECENT AMERICAN JUDICIAL DECISIONS INVOLVING INTERNATIONAL LAW*

By WILLIAM W. BISHOP, JR.

Of the Board of Editors

It is hoped that this will serve as a brief introduction to the plans of the JOURNAL to deal more adequately with judicial decisions involving international law. Although the JOURNAL has long carried the texts of a few judicial decisions, the Board of Editors has decided to establish a new department of judicial decisions which would, by means of digests and brief reviews, allow a far wider coverage of current cases than in the past. The most important decisions will still be printed in full. Comments upon judicial decisions will continue to be in the form of editorials or current notes, entirely distinct from the new department of judicial decisions. In this department the JOURNAL will endeavor to cover as completely as practicable American cases and cases decided by international tribunals, and to include such decisions of foreign courts as may be available. The assistance of members of the Society in bringing international law cases to the attention of the JOURNAL, especially those from tribunals other than the United States Supreme Court and the lower federal courts, will be most helpful and greatly appreciated—indeed, it will be indispensable.

The digest system, used by American lawyers as a guide through the multitude of American cases in the court reports, does not furnish a very satisfactory means for finding even the decisions in this country on international law points. It is hoped that, with the coöperation of the members of the American Society, it may be possible for the new department in the JOURNAL to be useful to the lawyer, the scholar, the Government worker, and to all persons interested in keeping informed of current development in international law. It is believed that as this new department is developed, it may come to serve a twofold purpose—bringing to the attention of the practicing lawyer decisions of our courts and of the courts of other countries which may be useful to him in dealing with questions involving international law, and also bringing to the notice of the general public the great number of cases turning upon such international law questions as treaty interpretation or nationality, some of which affect the lives of many among us, thereby pointing up the fact that international law is a matter of immediate practical concern and not an esoteric mystery of interest only to a few statesmen and scholars.

* Paper presented at New York regional meeting of American Society of International Law, November 8, 1947.

One of the important tasks in the field of international law at the present time is to make the source-materials of international law more widely and more readily accessible. Digests and reports of judicial decisions, like other sources of international law, are the indispensable raw material for scholarly endeavors, and perhaps some day for eventual codification. The very important customary side of international law has, like the common law, developed largely from case to case. Decisions of the courts, national as well as international, play an important part in this development of customary international law and the enunciation of its rules. Judicial decisions are listed by Article 38 of the Statute of the International Court of Justice as a "subsidiary means for the determination of rules" of international law;¹ of considerably more importance is their value as evidence of customary international law.² Judicial decisions help to form international custom, and they show what the courts have determined to be international custom accepted as law. Judicial decisions will usually merit greater weight than pronouncements by writers, inasmuch as such decisions are normally rendered with respect to an actual set of facts, after full argument on both sides, and with a feeling of judicial responsibility due to the realization that resolution of a real and immediate controversy depends upon the decision.³

A brief resumé of some of the recent cases decided by courts in this country may give some picture of the type of decisions involving international law which are to be covered in the JOURNAL's new department. Limitations of time prevent an attempt to deal herein with foreign cases.

The July issue of the JOURNAL carried the *Ranollo* case,⁴ holding the chauffeur of the Secretary-General of the United Nations not immune from prosecution for speeding although the Secretary-General was in the car; and *New York Life Insurance Co. v. Bennion*,⁵ holding for purposes of an insurance policy that the death of the captain of a battleship at the time of the attack on Pearl Harbor was during "war," despite the absence of any prior declaration of war.

Notable among the recent decisions is *Clark v. Allen*,⁶ in which the United States Supreme Court was confronted with the question whether the Alien Property Custodian (and his successor), or certain California heirs, took real and personal property in California left to German nationals by a California resident who died during the war. California statutes provided that aliens could not inherit such property unless their

¹ Statute of the International Court of Justice, Art. 38, paragraph 1(d).

² See Lauterpacht, "Decisions of Municipal Courts as a Source of International Law," 1929 *British Year Book of International Law* 65.

³ See J. F. Williams, *Aspects of Modern International Law* (1939), pp. 52-56.

⁴ *Westchester County v. Ranollo*, City Court of New Rochelle, Nov. 8, 1946; 67 N. Y. Supp. (2d) 31, 41 this JOURNAL 690.

⁵ 158 F. 2d 260, 41 this JOURNAL 680; C.C.A. 10th, Nov. 6, 1946.

⁶ 331 U. S. 503, June 9, 1947.

country gave reciprocity to Americans. The A.P.C.'s rights depended on those of the German heirs. The A.P.C. claimed that the bequests to the German heirs were good, under the treaty of friendship, commerce and consular rights between the United States and Germany, signed Dec. 8, 1923.⁷ The Court upheld the Germans' right to inherit the real property under the treaty provision, which it regarded as having remained in force despite the war. On this the Court followed *Techt v. Hughes*,⁸ to the effect that treaty provisions not incompatible with a state of war are not suspended or terminated by the outbreak of war. A 1945 communication from the Department of State took this position, reversing Lansing's stand in 1918.⁹ The Court rejected the argument that Germany had ceased to exist as an independent state since the unconditional surrender. With respect to the personal property, however, the treaty was construed to give no rights unless the deceased was a German national.

Although *United States v. California*,¹⁰ holding that the United States rather than California had title to "tidelands" within the three-mile belt off the California coast, involved a question of federal versus state's rights, the Supreme Court opinion contains a long discussion of the history and nature of authority over territorial waters.

In *Bergman v. De Sieres*,¹¹ a United States district court in New York held the French Minister to Bolivia immune from a civil suit brought against him in New York while awaiting transportation to Bolivia; there is an interesting discussion of the immunities of diplomats while in third states. In the *Chapman* case¹² the United States Tax Court held recently that a League of Nations official working in Princeton during the war years was not entitled to exemption from United States income tax (prior to the International Organizations Immunities Act),¹³ though alien employees of foreign governments were specifically exempted.¹⁴ The Court rejected his contention that a League employee was merely the employee of each of the 45 member governments, and therefore a foreign government employee.

In the *Steinworth* case,¹⁵ the Circuit Court of Appeals in New York released on *habeas corpus* a person interned as an enemy alien. He was born in Costa Rica of German parents and thus started life with dual nationality, was taken to Germany, served in the German army during the

⁷ Article IV; 44 Stat. 2132.

⁸ 229 N. Y. 222, 128 N.E. 185 (1920); cert. den. 254 U. S. 643 (1920).

⁹ See 1918 For. Rel. Supp. 2, p. 309.

¹⁰ 67 S. Ct. 1658; June 23, 1947.

¹¹ 71 F. Supp. 334; S.D.N.Y. Dec. 30, 1946.

¹² *John Henry Chapman v. Commissioner of Internal Revenue*, 9 T. C. No. 87, Oct. 9, 1947.

¹³ 59 Stat. 669; discussed by Lawrence Preuss in 40 this JOURNAL 332.

¹⁴ Internal Revenue Code, section 116(h).

¹⁵ *U.S. ex rel. Steinworth v. Watkins*, 159 F. 2d 50; C.C.A. 2d, Jan. 15, 1947.

First World War, returned to Costa Rica, and acquired Costa Rican citizenship under circumstances resulting in his loss of German nationality. In September, 1944 he was deprived of Costa Rican citizenship and arrested by Costa Rican authorities, and thereafter was brought to the United States for detention as an enemy alien. The Court held that though the validity of the Costa Rican action could not be attacked in our courts, cancellation of Costa Rican citizenship did not restore his German citizenship; since he was not a German citizen, there was no legal basis for holding him in custody.

In three recent cases involving the validity of covenants against the sale of land to, or its occupancy by, persons of certain races, it was argued that such discrimination was invalid, at least in part because it was contrary to the principles of the United Nations Charter. The Ontario Court upheld this contention, regarding the Charter as one element establishing Ontario public policy.¹⁶ The Supreme Court of Michigan,¹⁷ and the Supreme Court of New York, Queens Special Term,¹⁸ held the United Nations Charter inapplicable, the latter Court pointing out that the Charter itself specified that it did not authorize the United Nations to "intervene in matters which are essentially within the domestic jurisdiction of any state."¹⁹

Recently the Special Term for New York County held that an Estonian company whose stockholders had escaped to Sweden was entitled to withdraw from a New York bank a deposit made by the company in early 1940, despite an attempt by the unrecognized Estonian Soviet Socialist Republic to nationalize the company and to seize its property even in New York.²⁰

A Circuit Court of Appeals in Texas has held that the provision in the Treaty of Guadalupe Hidalgo, recognizing the title of the United States to territory north of the Rio Grande, to the effect that "property of every kind . . . belonging to Mexicans . . . shall be inviolably respected," did not prevent the operation of the ordinary Texas laws as to loss or acquisition of title to real property by adverse possession.²¹ The Court discussed the interpretation of treaties, the extent of treaty-making power, and the principle of inviolability of private property rights in case of state succession.

The New Jersey courts have held that even if the Consular Convention of 1878 with Italy was not in force during the war, yet an Italian consul

¹⁶ *Re Drummond Wren* [1945] 4 D.L.R. 674; Ontario High Court, Oct. 31, 1945.

¹⁷ *Sipes v. McGhee*, 316 Mich. 614; Jan. 7, 1947.

¹⁸ *Kemp v. Rubin*, 69 N. Y. Supp. (2d) 680; Feb. 11, 1947.

¹⁹ Art. 2, paragraph 7.

²⁰ *A/S Merilaid & Co. v. Chase National Bank*, 71 N. Y. Supp. (2d) 377; Special Term, New York County, Part IV, May 16, 1947.

²¹ *Amaya et al. v. Stanolind Oil and Gas Co.*, 158 F. 2d 554; C.C.A. 5th, Dec. 27, 1946, reh. den. January 21, 1947.

was entitled, under principles of international law, to represent his fellow-countrymen in the New Jersey Court of Chancery.²² In *Swiss Confederation v. United States*,²³ the United States Court of Claims held the Swiss Government entitled to sue the United States Government for compensation for certain toluol owned by the Swiss Government and requisitioned by the United States in 1941. The District Court for Puerto Rico held the United States Government and its naval personnel entitled to salvage against the German vessel *Odenwald*, which was brought to Puerto Rico by our Neutrality Patrol after its crew tried to scuttle it in mid-Atlantic on November 6, 1941; the Court referred to the wrongful display of the American flag by the German ship when hailed by the United States patrol vessel, and stated that the master of the *Odenwald* had no right to sink his own ship in violation of the rights of Swiss mortgagees and unknown cargo-owners.²⁴

The reports contain many decisions involving nationality questions, and the exclusion or deportation of aliens. Some of these raise questions of international law; more often they concern primarily our administrative procedures or statutory interpretation. In one of the more outstanding nationality cases, the Court held that a man born in Massachusetts of a Portuguese father and Brazilian mother, taken to Portugal at the age of 12, drafted by the Portuguese army when 21, who served in that army under protest, and who came to the United States as a stowaway in an Army plane, had not lost his American citizenship and therefore could not be deported as a stowaway.²⁵ The Court recognized that he had dual nationality, but held that foreign military service which was not voluntary did not expatriate him. Likewise, an American girl who, in order to marry an Italian consul in this country, signed a document in Italian containing an oath of allegiance to Italy, and who after her marriage had to go to Italy with her husband in 1941 when Italian consular offices in the United States were ordered closed, was held not to have expatriated herself.²⁶ A federal court in New Jersey found that an applicant for naturalization did not lack good moral character, because he had entered into a second marriage in that state in reliance upon a Mexican divorce which was regarded as void in New Jersey.²⁷ A Spanish national was denied American citizenship since he had claimed exemption from the draft here as a neutral alien, even though he had soon thereafter applied for voluntary induction and had undergone a serious operation in an effort to meet the Army physical requirements.²⁸

²² *Zolossi v. Tarantola*, 138 N. J. Eq. 579; Nov. 6, 1946.

²³ 70 F. Supp. 235; Mar. 3, 1947.

²⁴ *The Omaha*, 71 F. Supp. 314; D.C.P.R., Apr. 30, 1947.

²⁵ *Dos Reis ex rel. Camara v. Nicolls*, 161 F. 2d 860; C.C.A. 1st, April 2, 1947.

²⁶ *Savorgnan v. United States*, 73 F. Supp. 109; W. D. Wisc., Sept. 10, 1947.

²⁷ *Petition of Smith*, 71 F. Supp. 968; D.N.J., April 30, 1947.

²⁸ *In re Martinez*, 73 F. Supp. 101; W. D. Pa., July 23, 1947.

Among the recent deportation cases of interest is a holding that the Federal Administrative Procedure Act of 1946 does not give a right to judicial determination of a question of law in deportation proceedings;²⁹ and a decision that a Norwegian follower of Quisling, who was seized by the U. S. Coast Guard in Greenland in September, 1941 and brought to this country, could not be deported to Norway, where he was wanted for war crimes trials as a witness and defendant.³⁰ A person born in Lorraine in 1894 was held not a "native" of Germany, and therefore not liable to constraint as an enemy alien;³¹ while a man born in Danzig in 1914, who entered the United States on a Danzig passport in 1936, was held an enemy alien because he had elected to be treated as German in accordance with a German decree of 1939, even though the United States never recognized the German annexation of Danzig in 1939.³²

A number of cases were concerned with the Trading with the Enemy Act and the powers and functions of the Alien Property Custodian. When a girl resident in Hawaii, who was both an American citizen and a Japanese national, sought to recover property held by the A.P.C., it was held that although "for most purposes while in the United States a dual citizen will be regarded as a United States citizen only," yet under the Trading with the Enemy Act the important thing was to establish that she was not an enemy national; as she failed in this, the Custodian retained the property.³³ A conviction was upheld where an American citizen in the United States communicated during the war, indirectly by way of Spain, with his wife, an American citizen in Germany, without obtaining Presidential permission; under the territorial test laid down in the Act she was an "enemy alien" for this purpose.³⁴

Perhaps the foregoing review of some of the recent American decisions will indicate the variety of international law points involved in cases currently coming before the courts of this country. International lawyers in the United States, however, should also have access to cases of this same sort which are arising before the national courts of other countries, as well as in international tribunals. For this purpose, almost our only tool is the *Annual Digest and Reports of Public International Law Cases*, edited by Professor Lauterpacht of Cambridge.³⁵ The *Annual Digest*

²⁹ *U.S. ex rel. Trinler v. Carusi*, 72 F. Supp. 193; E. D. Pa., June 18, 1947.

³⁰ *U.S. ex rel. Bradley v. Watkins*, 163 F. 2d 328; C.C.A. 2d, July 23, 1947.

³¹ *U.S. ex rel. Gregoire v. Watkins*, 69 F. Supp. 889; S.D.N.Y., Sept. 13, 1946.

³² *U.S. ex rel. Zeller v. Watkins*, 72 F. Supp. 980; S.D.N.Y., July 9, 1947.

³³ *Okthara v. Clark*, 71 F. Supp. 319; D. Hawaii, May 6, 1947.

³⁴ *United States v. Krepper*, 159 F. 2d 958; C.C.A. 3d, Dec. 11, 1946; cert. den., 67 S. Ct. 865, Mar. 3, 1947.

³⁵ This series of volumes covers the period since 1919 and contains digests, or English translations, of reported decisions of international tribunals and the national courts of most countries of the world. The volumes do not appear until several years after the cases have been decided. Close cooperation between this JOURNAL and the *Annual Digest* may be hoped for.

should receive additional coöperation and support, as well as more widespread use. We need digests and collections of cases decided by national courts, as well as digests of state practice in international law matters along the lines in which Moore³⁶ and Hackworth³⁷ have pioneered for the United States.³⁸ A start might well be made with national collections of the international law cases which have been decided by the courts of each country;³⁹ for a beginning we have MacKenzie and Laing's volume for Canada⁴⁰ and the *Fontes Juris Gentium* volume for Germany.⁴¹ Indeed, in this sphere of the publication, digesting, indexing and translating of international law cases may be found one of the more fertile fields for coöperation through the United Nations looking toward the progressive development of international law.

One of the most urgently needed jobs is more adequate publication, indexing and translating of decisions of international tribunals. Inasmuch as formerly the League of Nations, and now the United Nations, registers and publishes international agreements, it has well been suggested that international arbitral awards should be published under the auspices of the United Nations.⁴² We may hope that the modest effort of the JOURNAL to give wider coverage to international law cases may encourage others to go forward in the same direction. Therefore, it is believed that we would all most heartily endorse the report of the United Nations' Committee on the Progressive Development of International Law, wherein it recommends that "the International Law Commission consider ways and means for making the evidence of customary international law more readily available by the compilation of digests of State practice, and by the collection and publication of the decisions of national and international courts on international law questions."⁴³

³⁶ John Bassett Moore, *A Digest of International Law*, 8 vols., 1906, U. S. Government Printing Office, Washington.

³⁷ Green H. Hackworth, *Digest of International Law*, 8 vols., 1940-1944, U. S. Government Printing Office, Washington.

³⁸ A somewhat comparable task for Great Britain has been begun in H. A. Smith, *Great Britain and the Law of Nations*, 2 vols. to date, 1932, 1935, London, P. S. King and Son; and A. D. McNair, *The Law of Treaties*, 1938, Columbia University Press, New York.

³⁹ These would not be the same as the type of casebook used for teaching purposes in American courses in international law, although a number of our casebooks give enough American cases to be fairly useful in this respect to readers abroad.

⁴⁰ Norman MacKenzie and Lionel H. Laing, *Canada and the Law of Nations*, 1938, Toronto, The Ryerson Press; New Haven, Yale University Press.

⁴¹ *Institut für ausländisches öffentliches Recht und Völkerrecht, Fontes Juris Gentium*, Series A, Sectio 2, Tomus 1, Decisions of the German Supreme Court Relating to International Law, 1931, Carl Heymanns Verlag, Berlin.

⁴² Kenneth S. Carlston, *Process of International Arbitration* (1946), pp. 263-264.

⁴³ Paragraph 18, Report of the Committee on the Progressive Development of International Law and its Codification, on the methods for encouraging the progressive development of international law and its eventual codification, U. N. document A/AC.10/51, June 17, 1947, reprinted in 41 this JOURNAL, supplement, pp. 18, 24-25.

TEXT AND DIGESTS *

Treaties—effect of war—aliens' right to inherit.

CLARK v. ALLEN. 331 U.S. 503.

United States Supreme Court, June 9, 1947.

Mr. Justice Douglas delivered the opinion of the Court.

Alvina Wagner, a resident of California, died in 1942, leaving real and personal property situate there. By a will dated December 23, 1941, and admitted to probate in a California court in 1942, she bequeathed her entire estate to four relatives who are nationals and residents of Germany. Six heirs-at-law, residents of California, filed a petition for determination of heirship in the probate proceedings claiming that the German nationals were ineligible as legatees under California law.¹

There has never been a hearing on that petition. For in 1943 the Alien Property Custodian, to whose functions the Attorney General has recently succeeded,² vested in himself all right, title and interest of the German nationals in the estate of this decedent.³ He thereupon instituted this action in the District Court against the executor under the will and the California heirs-at-law for a determination that they had no interest in the

* The following texts and digests are arranged in order of Courts, with the United States Supreme Court first, then United States Circuit Courts of Appeals, United States District Courts, other Federal courts, and then the State courts arranged alphabetically by State names. The entries give the name of the case, its citation, the name of the court, date of the judgment, and name of the judge writing the opinion. The items are prefaced by a "catch-line" of a few words indicating the general branch of international law with which each deals.

¹ Section 259, California Probate Code, in 1942 provided:

The rights of aliens not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are inhabitants and citizens and upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign countries.

Section 259.2 provided:

If such reciprocal rights are not found to exist and if no heirs other than such aliens are found eligible to take such property, the property shall be disposed of as escheated property.

The condition with respect to receipt of moneys in the United States was repealed in 1945, while this case was pending. Cal. Stats. 1945, c. 1160, § 1, effective September 15, 1945. Under the original act, the non-resident aliens had the burden of establishing the fact of existence of the reciprocal rights. § 259.1. By the 1945 amendment the burden of establishing the non-existence of such reciprocal right was placed on him who challenged the right of the non-resident aliens to take. Section 259.2 was repealed.

² Exec. Order No. 9788, Oct. 15, 1946, 11 Fed. Reg. 11981.

³ Vesting Order No. 762, 8 Fed. Reg. 1252.

estate and that he was entitled to the entire net estate, after payment of administration and other expenses. The District Court granted judgment for the Custodian on the pleadings. 52 F. Supp. 850. The Circuit Court of Appeals reversed, holding that the District Court was without jurisdiction of the subject matter. 147 F. 2d 136. The case came here on certiorari. We held that the District Court had jurisdiction of the suit and remanded the cause to the Circuit Court of Appeals for consideration of the merits. 326 U.S. 490. The Circuit Court of Appeals thereupon held for respondents. 156 F. 2d 653. The case is here again on a petition for a writ of certiorari which we granted because the issues raised are of national importance.

First. Our problem starts with the Treaty of Friendship, Commerce and Consular Rights with Germany, signed December 8, 1923, and proclaimed October 14, 1925. 44 Stat. 2132. It has different provisions governing the testamentary disposition of realty and personalty, which we will treat separately. The one pertaining to realty, contained in Article IV, reads as follows:

Where, on the death of any person holding real or other immovable property or interests therein within the territories of one High Contracting Party, such property or interests therein would, by the laws of the country or by a testamentary disposition, descend or pass to a national of the other High Contracting Party, whether resident or non-resident, were he not disqualified by the laws of the country where such property or interests therein is or are situated, such national shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and withdraw the proceeds thereof, without restraint or interference, and exempt from any succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the nationals of the country from which such proceeds may be drawn.

The rights secured are in terms a right to sell within a specified time plus a right to withdraw the proceeds and an exemption from discriminatory taxation. It is plain that those rights extend to the German heirs of "any person" holding realty in the United States. And though they are not expressed in terms of ownership or the right to inherit, that is their import and meaning. *Techt v. Hughes*, 229 N. Y. 222, 240, 128 N. E. 185, 191; *Ahrens v. Ahrens*, 144 Ia. 486, 489, 123 N. W. 164, 166. And see *People v. Gerke*, 5 Cal. 381; *Scharpf v. Schmidt*, 172 Ill. 255, 50 N. E. 182; *Colson v. Carlson*, 116 Kan. 593, 227 P. 360; *Goos v. Brocks*, 117 Neb. 750, 223 N. W. 13.

If, therefore, the provisions of the treaty have not been superseded or abrogated, they prevail over any requirements of California law which conflict with them. *Hauenstein v. Lynham*, 100 U. S. 483, 488-490.

Second. The Circuit Court of Appeals concluded that these provisions of the treaty had been abrogated. It relied for that conclusion on the

Trading with the Enemy Act, 40 Stat. 411, 50 U. S. C. App. § 1 *et seq.*, as amended by the First War Powers Act, 55 Stat. 839, 50 U. S. C. App. Supp. I, § 5, and the Treaty of Berlin, 42 Stat. 1939.

We start from the premise that the outbreak of war does not necessarily suspend or abrogate treaty provisions. *Society for the Propagation of the Gospel v. New Haven*, 8 Wheat. 464, 494-495. There may of course be such an incompatibility between a particular treaty provision and the maintenance of a state of war as to make clear that it should not be enforced. *Karnuth v. United States*, 279 U. S. 231. Or the Chief Executive or the Congress may have formulated a national policy quite inconsistent with the enforcement of a treaty in whole or in part. This was the view stated in *Techt v. Hughes*, *supra*, and we believe it to be the correct one. That case concerned the right of a resident alien enemy to inherit real property in New York. Under New York law, as it then stood, an alien enemy had no such right. The question was whether the right was granted by a reciprocal inheritance provision in a treaty with Austria which was couched in terms practically identical with those we have here. The court found nothing incompatible with national policy in permitting the resident alien enemy to have the right of inheritance granted by the treaty. Cardozo, J., speaking for the court, stated the applicable principles as follows:

The question is not what states *may* do after war has supervened, and this without breach of their duty as members of the society of nations. The question is what courts are to presume that they have done. . . . President and senate may denounce the treaty, and thus terminate its life. Congress may enact an inconsistent rule, which will control the action of the courts (*Fong Yue Ting v. United States*, 149 U. S. 698). The treaty of peace itself may set up new relations, and terminate earlier compacts either tacitly or expressly. . . . But until some one of these things is done, until some one of these events occurs, while war is still flagrant, and the will of the political departments of the government unrevealed, the courts, as I view their function, play a humbler and more cautious part. It is not for them to denounce treaties generally, *en bloc*. Their part it is, as one provision or another is involved in some actual controversy before them, to determine whether, alone, or by force of connection with an inseparable scheme, the provision is inconsistent with the policy or safety of the nation in the emergency of war, and hence presumably intended to be limited to times of peace. The mere fact that other portions of the treaty are suspended or even abrogated is not conclusive. The treaty does not fall in its entirety unless it has the character of an indivisible act. 229 N. Y. pp. 242-243.

To the same effect see *Goos v. Brocks*, *supra*; *State v. Reardon*, 120 Kan. 614, 245 P. 158.⁴

⁴ For a recent review of the authorities see Lenoir "The Effect of War on Bilateral Treaties," 34 Geo. L. J. 129.

We do not think that the national policy expressed in the Trading with the Enemy Act, as amended, is incompatible with the right of inheritance granted German aliens under Article IV of the treaty. It is true that since the declaration of war on December 11, 1941 (55 Stat. 796), the Act and the Executive Orders issued thereunder have prohibited the entry of German nationals into this country,⁵ have outlawed communications or transactions of a commercial character with them,⁶ and have precluded the removal of money or property from this country for their use or account.⁷ We assume that these provisions abrogate the parts of Article IV of the treaty dealing with the liquidation of the inheritance and the withdrawal of the proceeds, even though the Act provides that the prohibited activities and transactions may be licensed.⁸ But the Act and the Executive Orders do not evince such hostility to ownership of property by alien enemies as to imply that its acquisition conflicts with the national policy. There is, indeed, tacit recognition that acquisition of property by inheritance is compatible with the scheme of the Act. For the custodian is expressly empowered to represent the alien enemy heir in all legal proceedings, including those incident to succession⁹. Much reliance for the contrary view is placed on the power to vest alien property in an agency of the United States.¹⁰ But the power to vest, *i.e.*, to take away, what may be owned or acquired does not reveal a policy at odds with the reciprocal right to inherit granted by Article IV of the treaty. For the power to vest is discretionary not mandatory. The loss of the inheritance by vesting is, therefore, not inevitable. But more important, vesting does not necessarily deprive the alien enemy of all the benefits of his inheritance. If he owes money to American creditors, the property will be applied to the payment of his debts.¹¹

To give the power to vest the effect which respondents urge would, indeed, prove too much. That power is not restricted to property of alien enemies. It extends to the property of nationals of any foreign country,

⁵ § 3 (b).

⁶ § 3 (a).

⁷ § 7 (c); § 5 (b), as amended; Exec. Order No. 8785, 3 C. F. R. Cum. Supp. 948.

⁸ § 5 (a).

⁹ Exec. Order No. 9193, ¶ 5, 3 C. F. R. Cum. Supp. 1174, 1176.

¹⁰ Section 5 (b) (1), as amended, provides in part:

During the time of war or during any other period of national emergency declared by the President . . . any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes. . . .

¹¹ Pub. L. No. 671, 79th Cong., 2d Sess., adding § 84 to the Trading with the Enemy Act.

friend or enemy.¹² Provisions comparable to that contained in Article IV of the present treaty are found in existing treaties with friendly nations.¹³ We will not readily assume that when Congress enacted § 5 (b) and authorized the vesting of property, it had a purpose to abrogate all such treaty clauses. Cf. *Cook v. United States*, 288 U. S. 102, 120. Yet if the power to vest is inconsistent with the right of inheritance of an alien enemy, it is difficult to see why it is any less so when other aliens are involved. Finally, there is a distinction between the acquisition of property and the use thereof which § 5 (b) itself recognizes. That section not only grants the President the power to vest; it likewise grants him authority under the same circumstances to "prevent or prohibit, any acquisition . . . of . . . any property in which any foreign country or a national thereof has any interest." § 5 (b) (1) (B). No action has been taken to prevent or prohibit the acquisition of property by inheritance on the part of enemy aliens. The grant of express power to cut off, *inter alia*, the right of inheritance and the non-exercise of the power lend support to the view that the Trading with the Enemy Act, as amended, did not without more suspend or abrogate Article IV of the present treaty. This conclusion squares with the general rule stated in *Karnuth v. United States*, *supra*, p. 237, that treaty provisions "giving the right to citizens or subjects of one of the high contracting powers to continue to hold and transmit land in the territory of the other" survive the outbreak of war.

The argument based on the Treaty of Berlin is inconclusive. The Joint Resolution of July 2, 1921, 42 Stat. 105, 106, declared that property of German nationals held by the United States should be retained and no disposition made of it, except as specifically provided by law, until the German government made suitable provision for the satisfaction of claims of American nationals against it. Thus absolute title to the property in question became vested in the United States. *Cummings v. Deutsche Bank*, 300 U. S. 115. The Treaty of Berlin accorded the United States all rights and advantages specified in the resolution. But the Treaty of 1828 with Prussia contained a provision substantially similar to Article IV of the present treaty. 8 Stat. 378, 384, Art. XIV. Hence it is argued that if the Treaty of 1828 survived the outbreak of war and thus guaranteed property rights in German nationals by way of inheritance during that war, it would not have been necessary to have negotiated a new convention covering the same ground in 1923. And it is also argued that if the provision in the earlier treaty did not survive the war, it is unlikely that the same parties would intend like provisions in the later treaty to have a different effect.

¹² See note 10, *supra*.

¹³ Treaty with Great Britain, Art. I, II, March 2, 1899, 31 Stat. 1939. Treaty with Norway, Art. IV, June 5, 1928, 47 Stat. 2135, 2138.

The attitude of the State Department has varied. In 1918 Secretary Lansing expressed the view that such treaty provisions were not in force during the war with Germany and Austria.¹⁴ Today the Department apparently takes the other view.¹⁵ We have no reliable evidence of the intention of the high contracting parties outside the words of the present treaty. The attitude and conduct under earlier treaties, reflecting as they did numerous contingencies and conditions, leave no sure guide to the construction of the present treaty. Where the relevant historical sources and the instrument itself give no plain indication that it is to become inoperative in whole or in part on the outbreak of war, we are left to determine, as *Techt v. Hughes, supra*, indicates, whether the provision under which rights are asserted is incompatible with national policy in time of war. So far as the right of inheritance of realty under Article IV of the present treaty is concerned, we find no incompatibility with national policy, for reasons already given.

It is argued, however, that the Treaty of 1923 with Germany must be held to have failed to survive the war, since Germany, as a result of its defeat and the occupation by the Allies, has ceased to exist as an independent national or international community. But the question whether a state is in a position to perform its treaty obligations is essentially a political question. *Terlinden v. Ames*, 184 U. S. 270, 288. We find no evidence that the political departments have considered the collapse and surrender of Germany as putting an end to such provisions of the treaty as survived the outbreak of the war or the obligation of either party in respect to them. The Allied Control Council has, indeed, assumed control of Germany's foreign affairs and treaty obligations¹⁶—a policy and course of conduct by the political departments wholly consistent with the maintenance and enforcement, rather than the repudiation, of pre-existing treaties.

Third. The problem of the personality raises distinct questions. Article IV of the treaty contains the following provision pertaining to it:

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

¹⁴ U. S. Foreign Rel.: 1918 Supp. 2, p. 809 (Dept. State 1933); VI Hackworth, *Digest of International Law* (1943), p. 327.

¹⁵ Letter to the Attorney General from Acting Secretary of State, Joseph C. Grew, dated May 21, 1945, commenting on the Government's position in the present litigation.

¹⁶ "The Axis in Defeat," State Dept. Pub. No. 2428, pp. 71, 72, 77.

A practically identical provision of the Treaty of 1844 with Wurttemberg, Art. III, 8 Stat. 588, 590, was before the Court in *Frederickson v. Louisiana*, 23 How. 445. In that case the testator was a citizen of the United States, his legatees being citizens and residents of Wurttemberg. Louisiana, where the testator was domiciled, levied a succession tax of 10 percent on legatees not domiciled in the United States. The Court held that the treaty did not cover the "case of a citizen or subject of the respective countries residing at home, and disposing of property there in favor of a citizen or subject of the other . . .," pp. 447-448. That decision was made in 1860. In 1917 the Court followed it in cases involving three other treaties. *Petersen v. Iowa*, 245 U. S. 170; *Duus v. Brown*, 245 U. S. 176; *Skarderud v. Tax Commission*, 245 U. S. 633.

The construction adopted by those cases is, to say the least, permissible when the syntax of the sentences dealing with realty and personalty is considered. So far as realty is concerned, the testator includes "any person"; and the property covered is that within the territory of either of the high contracting parties. In case of personalty, the provision governs the right of "nationals" of either contracting party to dispose of their property within the territory of the "other" contracting party; and it is "such personal property" that the "heirs, legatees and donees" are entitled to take.

Petitioner, however, presents a detailed account of the history of the clause which was not before the Court in *Frederickson v. Louisiana*, *supra*, and which bears out the construction that it grants the foreign heir the right to succeed to his inheritance or the proceeds thereof. But we do not stop to review that history. For the consistent judicial construction of the language since 1860 has given it a character which the treaty-making agencies have not seen fit to alter. And that construction is entirely consistent with the plain language of the treaty. We therefore do not deem it appropriate to change that construction at this late date, even though as an original matter the other view might have much to commend it.

We accordingly hold that Article IV of the treaty does not cover personalty located in this country and which an American citizen undertakes to leave to German nationals. We do not know from the present record the nationality of Alvina Wagner. But since the issue arises on the Government's motion for judgment on the pleadings, we proceed on the assumption less favorable to it, *viz.*, that she was an American citizen.

Fourth. It is argued, however, that even though the provision of the treaty is inapplicable, the personalty may not be disposed of pursuant to the California statute because that statute is unconstitutional. Issues under the Fourteenth Amendment are not raised as in *Terrace v. Thompson*, 263 U. S. 197. The challenge to the statute is that it is an extension of state power into the field of foreign affairs, which is exclusively reserved by the Constitution to the Federal Government. That argument is based on

the fact that under the statute the right of non-resident aliens to take by succession or testamentary disposition is dependent upon the existence of a reciprocal right on the part of citizens of the United States to take personality on the same terms and conditions as residents and citizens of the other nation.¹⁷ The argument is that by this method California seeks to promote the right of American citizens to inherit abroad by offering to aliens reciprocal rights of inheritance in California. Such an offer of reciprocal arrangements is said to be a matter for settlement by the Federal Government on a nation-wide basis.

In *Blythe v. Hinckley*, 180 U. S. 333, California had granted aliens an unqualified right to inherit property within its borders. The alien claimant was a citizen of Great Britain with whom the United States had no treaty providing for inheritance by aliens in this country. The argument was that a grant of rights to aliens by a State was, in absence of a treaty, a forbidden entry into foreign affairs. The Court rejected the argument as being an extraordinary one. The objection to the present statute is equally far fetched.

Rights of succession to property are determined by local law. See *Lyeth v. Hoey*, 305 U. S. 188, 193; *Irving Trust Co. v. Day*, 314 U. S. 556, 562. Those rights may be affected by an overriding federal policy, as where a treaty makes different or conflicting arrangements. *Hauenstein v. Lynham*, *supra*. Then the state policy must give way. Cf. *Hines v. Davidowitz*, 312 U. S. 52. But here there is no treaty governing the rights of succession to the personal property. Nor has California entered the forbidden domain of negotiating with a foreign country, *United States v. Curtiss-Wright Corp.*, 299 U. S. 304, 316-17, or making a compact with it contrary to the prohibition of Article I, Section 10 of the Constitution. What California has done will have some incidental or indirect effect in foreign countries. But that is true of many state laws which none would claim cross the forbidden line.

In summary, we hold that disposition of the realty is governed by Article IV of the treaty. Disposition of the personality, however, is not governed by the treaty unless it is determined that Alvina Wagner was a German national. If she was an American citizen, disposition of the personality is governed by California law. Whether there are other requirements of the California statute which would bar the California heirs-at-law is a question on which we intimate no opinion.

The judgment is reversed in part and affirmed in part, and the cause is remanded to the District Court for proceedings in conformity with this opinion.

So ordered.

¹⁷ See note 1, *supra*.

Territorial waters—Federal vs. State control in U. S.

UNITED STATES v. STATE OF CALIFORNIA. 67 S. Ct. 1658; 332 U. S. 19.

U. S. Supreme Court, June 23, 1947.

Original bill in Supreme Court by United States against California seeking decree declaring rights of United States over lands, minerals and other things of value underlying Pacific Ocean off coast of California, seaward of ordinary low water mark to extent of three nautical miles, and enjoining California and all persons from trespass upon that area in violation of rights of United States. California claimed ownership of land underlying ocean for three statute miles seaward from low water mark, and had granted leases and rights to various persons to extract oil from such lands. *Held*, Justices Frankfurter and Reed dissenting and Justice Jackson not participating, that United States is entitled to relief prayed for.

Delivering the opinion of the Court, Mr. Justice Black held that earlier decisions, such as *Pollard's Lessee v. Hagan*, 3 How. 212, recognized that state title prevailed over federal ownership only with respect to lands between low water and high water mark, or within "internal waters," and did not apply to lands beyond the low-water mark. With respect to territorial waters, he said:

From all the wealth of material supplied, however, we cannot say that the thirteen original colonies separately acquired ownership to the three-mile belt or the soil under it, even if they did acquire elements of the sovereignty of the English Crown by their revolution against it. Cf. *United States v. Curtiss-Wright Export Corporation*, 299 U. S. 304, 316, 57 S. Ct. 216, 219, 81 L. Ed. 255.

At the time this country won its independence from England there was no settled international custom or understanding among nations that each nation owned a three-mile water belt along its borders. Some countries, notably England, Spain, and Portugal, had, from time to time, made sweeping claims to a right of dominion over wide expanses of ocean. And controversies had arisen among nations about rights to fish in prescribed areas. But when this nation was formed, the idea of a three-mile belt over which a littoral nation could exercise rights of ownership was but a nebulous suggestion. Neither the English charters granted to this nation's settlers, nor the treaty of peace with England, nor any other document to which we have been referred, showed a purpose to set apart a three-mile ocean belt for colonial or state ownership. Those who settled this country were interested in lands upon which to live, and waters upon which to fish and sail. There is no substantial support in history for the idea that they wanted or claimed a right to block off the ocean's bottom for private ownership and use in the extraction of its wealth.

It did happen that shortly after we became a nation our statesmen became interested in establishing national dominion over a definite

marginal zone to protect our neutrality. Largely as a result of their efforts, the idea of a definite three-mile belt in which an adjacent nation can, if it chooses, exercise broad, if not complete dominion, has apparently at last been generally accepted throughout the world, although as late as 1876 there was still considerable doubt in England about its scope and even its existence. See *The Queen v. Keyn*, L. R. 2 Exch. Div. 63. That the political agencies of this nation both claim and exercise broad dominion and control over our three-mile marginal belt is now a settled fact. *Cunard Steamship Co. v. Mellon*, 262 U. S. 100, 122-124, 43 S. Ct. 504, 506-508, 67 L. Ed. 894, 27 A. L. R. 1306. And this assertion of national dominion over the three-mile belt is binding upon this Court. See *Jones v. United States*, 137 U. S. 202, 212-214, 11 S. Ct. 80, 83, 84, 34 L. Ed. 691; *Ex parte Cooper*, 143 U. S. 472, 502, 503, 12 S. Ct. 453, 460, 461, 36 L. Ed. 232.

Not only has acquisition, as it were, of the three-mile belt been accomplished by the national Government, but protection and control of it has been and is a function of national external sovereignty. See *Jones v. United States*, 137 U. S. 202, 11 S. Ct. 80, 34 L. Ed. 691; *Ex parte Cooper*, 143 U. S. 472, 502, 12 S. Ct. 453, 460, 36 L. Ed. 232. The belief that local interests are so predominant as constitutionally to require state dominion over lands under its land-locked navigable waters finds some argument for its support. But such can hardly be said in favor of state control over any part of the ocean or the ocean's bottom. This country, throughout its existence has stood for freedom of the seas, a principle whose breach has precipitated wars among nations. The country's adoption of the three-mile belt is by no means incompatible with its traditional insistence upon freedom of the sea, at least so long as the national Government's power to exercise control consistently with whatever international undertakings or commitments it may see fit to assume in the national interest is unencumbered. See *Hines v. Davidowitz*, 312 U. S. 52, 62-64, 61 S. Ct. 399, 401-403, 85 L. Ed. 581; *McCulloch v. State of Maryland*, *supra*. The three-mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location. It must have powers of dominion and regulation in the interest of its revenues, its health, and the security of its people from wars raged on or too near its coasts. And insofar as the nation asserts its rights under international law, whatever of value may be discovered in the seas next to its shores and within its protective belt, will most naturally be appropriated for its use. But whatever any nation does in the open sea, which detracts from its common usefulness to nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units. What this Government does, or even what the states do, anywhere in the ocean, is a subject upon which the nation may enter into and assume treaty or similar international obligations. See *United States v. Belmont*, 301 U. S. 324, 331, 332, 57 S. Ct. 758, 761, 762, 81 L. Ed. 1134. The very oil about which the state and nation here contend might well become the subject of international dispute and settlement.

The ocean, even its three-mile belt, is thus of vital consequence to to the nation in its desire to engage in commerce and to live in peace

with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual state, so, if wars come, they must be fought by the nation. See *Chy Lung v. Freeman*, 92 U. S. 275, 279, 23 L. Ed. 550. The state is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks. Conceding that the state has been authorized to exercise local police power functions in the part of the marginal belt within its declared boundaries, these do not detract from the Federal Government's paramount rights in and power over this area. Consequently, we are not persuaded to transplant the Pollard rule of ownership as an incident of state sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern. If this rationale of the Pollard case is a valid basis for a conclusion that paramount rights run to the states in inland waters to the shoreward of the low water mark, the same rationale leads to the conclusion that national interests responsibilities, and therefore national rights are paramount in waters lying to the seaward in the three-mile belt. Cf. *United States v. Curtiss-Wright Export Corporation*, 299 U. S. 304, 316, 57 S. Ct. 216, 219, 81 L. Ed. 255; *United States v. Causby*, 328 U. S. 256, 66 S. Ct. 1062, 90, L. Ed. 1206.

Aliens—deportation—“entry.”

DELGADILLO v. CARMICHAEL. 68 Sup. Ct. 10.

U. S. Supreme Court, Nov. 10, 1947. Douglas, J.

A Mexican citizen legally entered the United States in 1923 and resided here until June, 1942, when he shipped out of Los Angeles as a member of the crew of an American merchant vessel on a voyage to New York. The vessel was torpedoed off Cuba. He was rescued, taken to Cuba for a week, and then returned to Miami and resumed service as a seaman on an American vessel. In 1944 he was convicted of robbery in California. While in prison, deportation proceedings were brought against him as a result of this conviction of a crime involving moral turpitude within five years after entry into the United States. The District Court granted habeas corpus on the ground that the 1942 arrival at Miami was not a new “entry.” This was reversed by the Circuit Court of Appeals, Jan. 22, 1947, 159 F. (2d) 130, on the theory that it was immaterial whether the alien intended to land on foreign soil if in fact he did come to the United States from abroad. This was reversed by the Supreme Court, which distinguished *U. S. ex rel. Claussen v. Day*, 279 U. S. 398; *U. S. ex rel. Stapf v. Corsi*, 287 U. S. 129; and *U. S. ex rel. Volpe v. Smith*, 289 U. S. 422; on the ground that “those were cases where the alien plainly expected or planned to enter a foreign port or place. Here he was catapulted into the ocean, rescued, and taken to Cuba. He had no part in selecting the

foreign port as his destination. His itinerary was forced on him by wholly fortuitous circumstances . . . the exigencies of war, not his voluntary act, put him on foreign soil. It would indeed be harsh to read the statute so as to add the peril of deportation to such perils of the sea. We might as well hold that if he had been kidnapped and taken to Cuba, he made a statutory 'entry' on his voluntary return. Respect for law does not thrive on captious interpretations." The opinion approved *Di Pasquale v. Karnuth*, 158 F. (2d) 878 (CCA 2nd), refusing to regard as an "entry" the return to the country made by an alien who travelled while asleep on a railroad train which passed through Canada between Buffalo and Detroit.

Treaties—interpretation—private property rights and change of sovereignty.

AMAYA et al. v. STANOLIND OIL & GAS CO. et al. 158 F. (2d) 554. Circuit Court of Appeals, Fifth Circuit, Dec. 27, 1946; reh. den. Jan. 21, 1947. Waller, C. J.

Plaintiffs, Mexican citizens, sought to recover title to oil lands in the possession of defendants, which lay between the Rio Grande and Nueces rivers in Texas. The original grantee of the lands from Spain had conveyed them in 1811 to remote ancestor of plaintiffs, who was also a citizen and resident of Mexico. It was conceded that if the ordinary Texas statute of limitations applied, plaintiffs could not recover; but plaintiffs relied upon Article VIII of the Treaty of Guadalupe Hidalgo of Feb. 2, 1848 between the United States and Mexico, which provided that in the territories ceded "property of every kind, now belonging to Mexicans not established there shall be inviolably respected." The following sentence read, "The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guarantees equally ample as if same belonged to citizens of the United States." It was contended that the words "inviolably respected" prevented the application of the ordinary Texas statutes of limitations to lands in question.

Judgment of the District Court for the Southern District of Texas, in favor of defendant, 62 F. Supp. 181, was affirmed. The Court stated its conviction that "there is nothing in the treaty that suggests that the property of Mexican citizens would not be subject to the valid, and non-discriminatory, property laws of the State of Texas." Even if the phrase "inviolably respected" were singled out for construction alone, "We regard the phrase as a covenant on the part of the United States to respect from thenceforth any title that Mexicans then had, or might thereafter acquire, to property within the region, but not that it would guarantee that those Mexicans would never lose their title to persons by foreclosure,

sales under execution, trespasses, adverse possession, and other non-governmental acts." The Court continued: "The principles of international law imposed substantially the same obligation to respect property rights within annexed territory as did Art. VIII of the Treaty of Guadalupe Hidalgo. . . . Since the obligation of the treaty was substantially the same as that required by international law, and since international law does not prohibit the successor sovereign from subsequently enacting legislation in due course as to title to lands, there seems to be no reason to hold that the treaty prohibited this merely by the use of the word 'inviolably.'"

The Court also pointed to the Constitutional doubts which might arise if the treaty were to be construed as exempting land owned by non-resident aliens from the operation of state statutes of limitations, and queried whether the interpretation contended for by the plaintiffs would not be inconsistent "with the general rule of international law that in case of the division of an empire the power to regulate and control property passes to the new sovereign of the area involved."

Nationality—law governing.—Recognition of acts of foreign sovereign.

U. S. ex rel. STEINVORTH v. WATKINS. 159 F. (2d) 50.

Circuit Court of Appeals, Second Circuit, Jan. 15, 1947. Chase, C. J.

Steinvorth was born in Costa Rica of German parents, went with them to Germany in 1901, served in the German army during the first World War, went to Costa Rica to live in 1920, and in 1941 opted for Costa Rican citizenship, after learning from the German consul in Costa Rica that this would forfeit his German citizenship. On Sept. 23, 1944, the President of Costa Rica issued a resolution declaring that Steinvorth lost his Costa Rican citizenship. On the following day he was arrested by Costa Rican authorities, and was brought to the United States by our authorities in coöperation with Costa Rican officials, where he was held in internment as an enemy alien. His petition for habeas corpus was denied by the District Court for the Southern District of New York. On appeal,

Held: order reversed and appellant discharged from custody. The Court said that he could only be held if he was a native, citizen, denizen, or subject of a hostile country. He was not a native of Germany, nor was he a German citizen, denizen or subject. Under German law, his option for Costa Rican citizenship in 1941 terminated any German citizenship he may have acquired. With respect to the deprivation of Costa Rican nationality in 1944, the Court said: "The appellant now seeks to attack the validity of this presidential action and to have us hold it a nullity under Costa Rican law. Since it has been clearly shown that it was a governmental act performed within the territory of Costa Rica, we cannot sit in judgment upon its validity but we must accept it as a lawful cancellation of the appellant's Costa Rican citizenship because done by a

foreign sovereign within its own country. . . . Yet this deprivation of his Costa Rican citizenship did not restore him to German citizenship. That could only be done by Germany itself and there is nothing whatever in the record to show, or even suggest, that anything has happened since September 23, 1944, to make him a German citizen." Therefore there was no lawful basis for his restraint in the United States.

(In a similar case *not* involving loss of German nationality, this Court repeated its statement that the acts of the Costa Rican government in Costa Rica were not open to question. *U. S. ex rel. Von Heymann v. Watkins*, 159 F. (2d) 650, C.C.A. 2nd, Jan. 17, 1947, Chase, C. J.)

Naturalization—good moral character.

PETITIONS OF RUDDER, et al. 159 F. (2d) 695.

Circuit Court of Appeals, Second Circuit, Jan. 27, 1947. Swan, C. J.

On four appeals from the District Court for the Eastern District of New York in cases where naturalization petitions were challenged by the government on the ground that petitioners lacked the requisite good moral character because each petitioner had lived for a considerable period of time with a woman not his legal wife, the Court held that "Because of the permanence, stability and apparent respectability of the relationships involved in the cases at bar, we think the trial judge did not err in ruling that the several petitioners were not disqualified for citizenship." One petitioner had "married" in New York in 1924 a woman who had previously been divorced by her husband and was not entitled to remarry without permission from the divorce court; another had lived for four years with a married woman who had previously separated from her husband, and they married legally upon the former husband's death; a third had lived seven years with a married woman separated from her husband, and married her legally as soon as she succeeded in obtaining a divorce from the husband; and the fourth had separated from his wife for more than fifteen years and during the last eight or nine years lived with an unmarried woman who was known to neighbors and others as petitioner's wife. The Court summed up its ruling in stating: "Morality is not to be measured solely by conventional formality, nor are the mores of a community static. The trend of recent naturalization decisions is to stress stability and faithfulness in the 'marital' relationship rather than the mere legality of ties, which everyone knows may so easily be severed if the parties have the financial resources to obtain a Reno divorce."

(In *Petition of Smith*, 71 F. Supp. 968 (D.C.N.J. Apr. 30, 1947, Fake, D. J.), petitioner was held entitled to naturalization notwithstanding the fact that he married in New Jersey in reliance on a Mexican divorce from his first wife, obtained without the presence of either spouse in Mexico and consequently not regarded by New Jersey as a valid divorce.)

Enemy aliens—removal.

U. S. ex rel. HACK v. CLARK. 159 F. (2d) 552.

Circuit Court of Appeals, Seventh Circuit, Feb. 11, 1947. Minton, C. J.

Habeas corpus was sought against the deportation to Germany as a dangerous enemy alien of a German-born German national, on the grounds that a hearing had been denied, that the President could not delegate to the Attorney-General the duty of determining whether the individual was dangerous, that hostilities with Germany had ceased and the state of Germany no longer existed, and that hearings might not be held before persons not officers of the United States, the results of which would be used by the Attorney General in an advisory manner. Habeas corpus was denied by the District Court for the Northern District of Illinois, and this judgment was affirmed. Citing *U. S. ex rel. Knauer v. Jordan*, 158 F. (2d) 337; *Citizens Protective League v. Clark*, 155 F. (2d) 290; *U. S. ex rel. Schwarzkopf v. Uhl*, 137 F. (2d) 898, 900; *U. S. ex rel. Schluefer v. Watkins*, 67 F. Supp. 556, affirmed 158 F. (2d) 853; the court said: "In a proceeding of this kind but one question is open to the relator, and that is whether he is an enemy alien. . . . If he is, that ends the proceeding. He may not contest in the courts of the host nation when or under what circumstances he, an enemy alien, shall be ordered to depart. Whether the country from whence he came is still at war with the United States or is still in existence as a sovereign power is not for any court to say; that is a political question to be answered only by those branches of our Government charged with the responsibility of political decisions, namely, the executive and legislative branches."

Nationality—expatriation.

BAUER v. CLARK. 161 F. (2d) 397.

Circuit Court of Appeals, Seventh Circuit, Feb. 15, 1947. Major, C. J.

Plaintiff appealed from a decision of the District Court for the Southern District of Indiana, denying him a declaratory judgment to the effect that he was an American citizen. He was born in Alsace in 1905, came to the United States in 1930, became naturalized here in 1935, and in 1938 returned to Germany. In 1940 he entered the German Army and took an oath of allegiance to Germany. In 1941 he obtained an American passport on the basis of false representation, and returned to the United States to engage in espionage for Germany. Judgment of the District Court was affirmed, the Court holding that his expatriation resulted from the oath of allegiance to Germany and service in the German army, in addition to which there was a presumption of expatriation from his renewed residence of more than two years in the country from whence he came.

*Nationality—expatriation.*DOS REIS *ex rel.* CAMARA *v.* NICOLLS. 161 F. (2d) 860.

Circuit Court of Appeals, First Circuit, Apr. 2, 1947; reh. den. May 22. Magruder, C. J.

Camara was born in Massachusetts Dec. 31, 1921 of a Portugese father and Brazilian mother, was taken to Portugal when 12, drafted by the Portuguese army at 21, served therein despite protest and without taking an oath of allegiance, and after leaving the army stowed away in a U. S. Army plane and came to the United States. The immigration authorities sought to deport him as a stowaway, claiming that he had lost American citizenship under 8 U. S. Code, sect. 801 by serving in the armed forces of a foreign state whose nationality he had. Habeas corpus was denied by the District Court for the District of Massachusetts, 68 F. Supp. 773. This decision was reversed and he was held to be entitled to release as an Amercian citizen.

The court held that at birth Camara had "dual nationality as recognized in international law"; that his service in the Portuguese Army under compulsion did not deprive him of citizenship, and that an interpretation of the Nationality Act of 1940 to cover the case of involuntary service in a foreign army would be open to grave doubts of constitutionality. This interpretation of the Act was strengthened by the fact that during Congressional Hearings prior to its enactment a representative of the Department of State had unsuccessfully sought the inclusion of a provision that, in these cases of military service by persons of dual nationality at birth, entry into the foreign armed forces should be conclusively presumed to be voluntary. The rejection of this provision indicated the intention of Congress in enacting the section.

*Nationality—Philippine citizen prior to independence.—Deportation.*DEL GUERCIO *v.* GABOT. 161 F. (2d) 559.

Circuit Court of Appeals, Ninth Circuit, May 13, 1947. Stephens, C. J.

Habeas corpus was granted against the deportation of a Philippine native who entered Hawaii Sept. 9, 1927 and the continental United States July 11, 1929, and who remained in the country except for four hours on March 20, 1934 when he visited Mexico. He was found guilty on Jan. 28, 1935 of a second degree murder committed Oct. 11, 1934. Deportation was sought on the ground that within five years after entry he had committed a crime involving moral turpitude. Although the crime involved moral turpitude, and the entry after the brief visit to Mexico constituted an "entry" for the purpose of the deportation laws, the Court held that natives of the Philippines, prior to the establishment of Philippine independence, were not aliens but nationals. The Philippine Independence

Act of 1934 by its terms did not become effective until acceptance by the Philippine people, which took place May 14, 1935; though this Act provided that citizens of the Philippines who were not American citizens should be considered as if they were aliens for purposes of the United States immigration, exclusion and expulsion laws, this should not be given retroactive effect. Therefore he was not an alien at the time of entry or conviction.

Effect given acts of foreign government—restitution of property taken by Nazis.

BERNSTEIN v. VAN HEYGHEN FRÈRES SOCIÉTÉ ANONYME.*
163 F. (2d) 246.

Circuit Court of Appeals, Second Circuit, July 10, 1947. L. Hand, C. J.

The plaintiff, now a resident of New York, brought an action for conversion of his ship, for damages for her detention, and for proceeds of insurance paid for her loss at sea. In his complaint, plaintiff alleged that he owned all the shares of stock in a German corporation, that by means of duress Nazi officials compelled him to transfer all the stock to a Nazi designee from whom the defendant, a Belgian corporation, with notice of the duress, acquired a ship belonging to the plaintiff's corporation. The District Court quashed a warrant of attachment of a debt owed to the defendant, and dismissed the complaint. On appeal,

Held: Order affirmed, since United States courts could not adjudicate the validity of the official acts of another government. Judge Learned Hand found that the Executive, in concurring in the Nürnberg Judgment and in promulgating certain Military Government laws in Germany, had not acted to relieve the courts of their disability. He said: "Neither the 'Charter' nor the 'Judgment' aids the plaintiff in overcoming the real obstacle in his path; which is . . . that . . . the claim is reserved for adjudication along with all other such claims as part of the final settlement with Germany."

Judge Clark dissented. Certiorari was denied by the United States Supreme Court, 68 Sup. Ct. 88 (Oct. 13, 1947).

Aliens—deportation—person forcibly brought to U. S. by military forces.

U. S. ex rel. BRADLEY v. WATKINS. 163 F. (2d) 328.

Circuit Court of Appeals, Second Circuit, July 23, 1947. Swan, C. J.

Bradley, a Norwegian follower of Quisling, went to Greenland Sept. 3, 1941, and on Sept. 14 was taken into custody by the United States Coast Guard, transferred to a United States naval vessel, and brought to this country against his will on Oct. 14, 1941. He was ordered excluded by the

* Digest submitted by Lewis B. Beatty, Jr., Univ. of Pennsylvania Law School.

Immigration Service, but was held in custody throughout the period of hostilities and then was ordered deported to Norway, where he was wanted by the Norwegian Government as a defendant and witness in war criminal trials. Habeas corpus was denied by the District Court, but this was reversed and he was released by the Circuit Court of Appeals, A. Hand dissenting. The Court said:

"With respect to the immigration laws the status of the relator on arrival was the same, in our opinion, as that of a prisoner of war. Whether or not international law was violated by his seizure in and removal from Greenland before we became a belligerent, and whether his detention could be justified if he were still held in custody by the Navy, we need not consider, since the only justification asserted by the respondent for his detention is the exclusion order of Oct. 14, 1941. We hold that order no justification because Bradley was not an immigrant and, consequently, the board of special inquiry had no jurisdiction to make its order of exclusion."

The Court added: "The theory that an alien can be seized on foreign soil by armed forces of the United States Navy, brought as a prisoner to our shores, turned over to the immigration authorities as being an 'applicant for admission to the United States,' held in custody by them for nearly six years, and then deported to the country of his nativity by virtue of the exclusion order savors of those very ideologies against which our nation has just fought the greatest war of history. The relator is entitled to be released from custody although he has no right to enter the United States. He is an experienced seaman and states through his counsel that he has no desire to enter the United States but wishes to ship out as a seaman on a foreign bound vessel. He has this privilege. . . ."

Diplomatic officers—immunities in third states.

BERGMAN v. DE SIEYES. 71 F. Supp. 334.

U. S. District Court, Southern District of New York, Dec. 30, 1946. Caffey, D. J.

The French minister to Bolivia was sued civilly while temporarily in New York en route from France to his post in Bolivia. His defense was that he was immune from civil process. Plaintiff's motion to strike this defense was denied, the court holding defendant entitled to diplomatic immunity. The court said that defendant was not entitled to immunity under 22 U. S. Code, sect. 252; but that this section and the corresponding British statute were merely declaratory of international law. Relying on *New Chile Gold Mng. Co. v. Blanco*, 4 T.L.R. 346 (1888), *Holbrook, Nelson & Co. v. Henderson*, 6 N. Y. Super. Ct. 619 (1839), *Wilson v. Blanco*, 56 *ibid.* 582, 4 N.Y.S. 714 (1889), the French decision in *Beyley v. Piedanna et Mauroy*, Sirey, 1841, 2.148, the Habana Convention on Diplomatic Offi-

cers of 1928 (art. 23), and 4 Hackworth's Digest pp. 513-4, and discussing the views of treatise writers and the Harvard Research in International Law, the court held that immunity should be granted, despite the contrary decision in *Carbone v. Carbone*, 123 Misc. 656, 206 N.Y.S. 40 (1924). It concluded "that a foreign minister en route, either to or from his post in another country, is entitled to innocent passage through a third country and is also entitled, on the same grounds, whether as a matter of right or of discretion, to the same immunity from the jurisdiction of the courts of the third country that he would have if he were resident therein."

War—duration—termination.

STINSON v. NEW YORK LIFE INS. CO. 69 F. Supp. 860.

U. S. District Court, District of Columbia, Feb. 6, 1947. Morris, J.

In an action brought by the beneficiary of an insurance policy against the insurance company, the court held that the death of the insured, an officer of the United States Army, in a fall from a window in France on October 2, 1945, was a death "while the insured is in the military or naval forces of any country engaged in war," and therefore allowed only a restricted amount of recovery. The court said: "The United States becomes engaged in war whenever the Congress makes a declaration of war, or the congressional or executive authority of the Government recognizes that a state of war exists. The United States continues to be engaged in war until the legislative or executive authority, or both, recognize and declare that the United States is no longer so engaged. The judicial branch of the Government must, in this matter, of necessity be bound by and follow the action of the political branches of the Government."

* * *

It was likewise held that the present war was not over, in *Malbone Garage, Inc. v. Minkin*, 72 N.Y.S. (2d) 327, 272 Ap. Div. 109 (2nd Dept., Apr. 28, 1947); and in *Greenville Enterprise, Inc., v. Jennings*, 41 S.E. (2d) 868 (South Carolina Supreme Ct., Mar. 10, 1947). The former involved a lease with provisions for renewal "after the termination of the war," and the latter a statute making Sunday baseball and movies legal in counties containing Army posts, which statute expired six months "after the present war has ended."

Naturalization—residence—admission as treaty merchant.

PETITION OF WONG CHOON HOI. 71 F. Supp. 160.

U. S. District Court, Southern District of California, Feb. 17, 1947.
Mathes, D. J.

Chinese admitted to United States in 1934 as unmarried minor son of Chinese treaty merchant who had entered in 1922, who worked with

father as merchant, and who in 1941 married an American citizen, was entitled to naturalization under 8 U. S. Code, section 710(h). Despite the government's contention that he had not acquired the requisite three years "residence," since his original admission was as a treaty merchant, the court said "Precedent of long standing holds that where, as in the proceeding at bar, a Chinese merchant was admitted to this country prior to 1924 pursuant to the Treaty of 1880, members of his family (wife and unmarried minor children) coming after 1924 are entitled to be admitted for permanent residence by virtue of the Treaty."

(To like effect *In re Chi Yan Cham Louie*, 70 F. Supp. 493 (W. D. Wash., Aug. 29, 1946).)

Naturalization—residence—lawful entry.

PETITION OF BOZIN. 70 F. Supp. 5.

U. S. District Court, Southern District of California, Feb. 20, 1947.
Mathes, D. J.

Petitioner was granted naturalization under 8 U. S. Code, sect. 1001, as a person who had served honorably in the United States Navy during the Second World War and who had been "lawfully admitted into the United States," even though he obtained admission in 1940 as an alien seaman for sixty days, overstayed his time, and became a fisherman in California until drafted in 1944. The Court held the original entry to be "lawful" and expressly refused to follow *Ex parte Filibertie*, 62 F. Supp. 744 (E.D.S.C. 1945).

Aliens—land ownership.

IN RE KUYE TAKANO. 71 F. Supp. 79.

U. S. District Court, Southern District of California, Feb. 21, 1947.
Mathes, D. J.

While bankruptcy proceedings were pending against an American-born Japanese, California authorities brought escheat proceedings against certain land of the debtor as held by an alien ineligible to citizenship in violation of the Alien Land Laws of California. The court held that escheat proceedings might go forward, the land being removed from the schedule of the debtor's assets only if held escheated in the state courts. The court reiterated the rule that an alien's right to land could not be attacked except in direct proceedings by the state.

(Other cases involving aliens' rights to own land included *People v. Yeizo Ikada*, 177 P. (2d) 948 (Calif. Appeals, Mar. 14, 1947, reh. gtd. Apr. 12, 1947); and *Branham v. Minear*, 199 S.W. (2d) 841 (Tex. Civ. App., Jan. 17, 1947, reh. den. Feb. 21, 1947).)

Naturalization—expedited for military service.

PETITION OF WONG SIE LIM. 71 F. Supp. 84.

U. S. District Court, Northern District of California, Mar. 3, 1947. Goodman, D. J.

An alien who entered the United States illegally, was ordered deported, then inducted into the United States Army, deported after discharge, and thereafter lawfully admitted, sought the privilege of expedited naturalization under 8 U. S. Code, section 1001, as amended Dec. 22, 1944, although his military service had been solely within the continental United States. This privilege was denied, the statute being strictly construed.

Naturalization—Communist Party member.

IN RE MACKAY. 71 F. Supp. 397.

U. S. District Court, Northern District of Indiana, Mar. 31, 1947. Swygert, D. J.

Naturalization was denied to a man who admitted membership in the Communist party, on the grounds (1) that he was a member of an organization advocating overthrow of the Government of the United States (8 U. S. C. section 705), (2) that membership in the Communist party is incompatible with the requirement that a petitioner for naturalization be attached to the principles of the Constitution of the United States and well disposed to the good order and happiness thereof, and (3) because of unsatisfactory answers with respect to what his attitude would be regarding military service in case of a war with a country having a Communistic form of government. On this last point, the court limited the effect of *Girouard v. United States*, 328 U. S. 61, to persons refusing to take up arms on purely religious objections.

Aliens—deportation—moral turpitude—new “entry.”

U. S. ex rel. MANZELLA v. ZIMMERMAN. 71 F. Supp. 534.

U. S. District Court, Eastern District of Pennsylvania, Apr. 1, 1947. Maris, C. J.

Habeas corpus was granted against deportation of an alien, the court holding that escape from prison while awaiting trial was not a crime involving “moral turpitude.” It was also held that there was a new “entry” into the United States, when an alien who had lived here thirteen years went to an island on the Canadian side of the Detroit River for a one day picnic and returned.

Aliens—deportation—involuntary presence—asylum.

U. S. ex rel. VON KLECZKOWSKI v. WATKINS. 71 F. Supp. 429.

U. S. District Court, Southern District of New York, Apr. 22, 1947.
Rifkind, D. J.

Habeas corpus was sought against deportation of two Austrians who during the war had aided United States intelligence authorities in Turkey, had been brought without visas to the United States on Apr. 22, 1944 by military plane, and who had been detained as enemy aliens until 1946, when they were served with deportation warrants. Despite their contention that American officials had promised them protection in return for their services, and their argument that deportation did not apply to those brought into the United States involuntarily by the government or coming at its invitation, *habeas corpus* was denied. The court held deportation to be a permissible alternative to removal as enemy aliens (in which case they would have had the right of voluntary departure). The court did not regard the immigration laws as recognizing the concept of asylum, and added that there was no evidence that it would be unsafe for them to return to Austria and no suggestion that Turkey would be unsafe for them.

Territorial waters—law applicable on foreign vessel.

S. S. SAMOVAR. 72 F. Supp. 574.

U. S. District Court, Northern District of California, Apr. 24, 1947.
Mathes, D. J.

A longshoreman injured on a merchant vessel built in California for the U. S. Maritime Commission and delivered to the British Ministry of War Transport, which gave it a provisional British registry, libelled the vessel, its builder and its owner. The Ministry of War Transport claimed as charterer and did not request any immunity; it claimed that as the injury occurred on a British vessel British law should be applied. The court held that it had no jurisdiction with respect to the United States, but that the builder and Ministry of War Transport were liable. As to the applicable law, the court said: "So liability for a tort committed on board a vessel of foreign registry while in the territorial waters of a country, is determined by the law of that country. . . . Accordingly, libellant having been injured aboard a vessel flying the flag of Great Britain while in territorial waters of the United States, the general maritime law of this country determines the question of liability." California law was also to be applied in so far as it "worked no prejudice" to the general maritime law.

Jurisdiction—citizen abroad—treason.

UNITED STATES v. CHANDLER. 72 F. Supp. 230.

U. S. District Court, Massachusetts, Apr. 28, 1947. Ford, D. J.

Defendant, indicted for treason to the United States committed while in Germany, moved to dismiss the indictment on the grounds, *inter alia*, that the Constitutional definition of treason did not cover adherence to the enemy by one residing in enemy territory. The motion was denied, the Court saying in part on this point: "Treasonable acts endanger the sovereignty of the United States. It has never been doubted that Congress has the power to punish an act committed beyond the territorial jurisdiction of the United States which is directly injurious to the government of the United States. . . .

" . . . An alien domiciled in a foreign country as the defendant Chandler admittedly was during the periods alleged in the indictment was bound to obey all the laws of the German Reich as long as he remained in it, not immediately relating to citizenship, during his sojourn in it. All strangers are under the protection of a sovereign state while they are within its territory, and owe a local temporary allegiance in return for that protection. . . . At the same time a citizen of the United States owes to his government full, complete, and true allegiance. He may renounce and abandon it at any time. This is a natural and inherent right. When he goes abroad on a visit or for travel, he must, while abroad, obey the laws of the foreign country, where he is temporarily. In this sense and to this extent only he owes a sort of allegiance to such government, but to no extent and in no sense does this impair or qualify his allegiance or obligations to his own country or to his own government."

Neutral seizure of scuttled belligerent vessel on high seas—salvage.

THE OMAHA. 71 F. Supp. 314.

U. S. District Court, Puerto Rico, Apr. 30, 1947. Cooper, D. J.

Salvage proceedings were brought by the United States and naval personnel against the German vessel Odenwald which was stopped in mid-Atlantic, Nov. 6, 1941, by American neutrality patrol vessels. The Odenwald displayed United States colors, and her crew attempted to scuttle the vessel. Salvage was awarded to the United States and to the personnel who saved the Odenwald and brought it to Puerto Rico. The court held that although the master of the Odenwald may have been authorized by the German owners and German government to scuttle her, he was not entitled to sink her and so ignore the rights of a Swiss mortgagee and unknown cargo owners. The court said: "This is not a case of bounty or prize, inasmuch as the United States of America on November 6, 1941,

was not at war with Germany." It added: "Although it is true that the Odenwald had committed no wrong against the United States except the display of American colors on a foreign vessel (22 U.S.C.A. § 454), a maritime lien for salvage attached to her upon her being salvaged by the people of the Omaha and Somers and they had the right to bring her into the nearest port."

Nationality—dual—enemy property.

MIYUKI OKIHARA v. CLARK. 71 F. Supp. 319.

U. S. District Court, Hawaii, May 6, 1947. McLaughlin, J.

A resident of Hawaii, who was an American citizen and also a Japanese national, sought to recover from the Alien Property Custodian certain land and money vested by him. The Custodian claimed that the property belonged to plaintiff's uncle, a Japanese national resident in Japan. Plaintiff's complaint was dismissed, the court holding that to recover plaintiff must show that she was not an "enemy," "ally of enemy," or "foreign national"; she could not show this, despite her American citizenship. It added: "And while for most purposes while in the United States a dual citizen will be regarded as a United States citizen only, yet under an act such as the Trading with the Enemy Act, its scope, purpose and precise provisions require the consideration of realities as well." The court further held that the uncle's interest had not been transferred to plaintiff because the deed purporting to do so was not filed until several hours after effective time of the "freezing" order of July 25, 1941.

Naturalization—lawful entry.

IN RE SIMMIOLKJIER. 71 F. Supp. 553.

District Court, Virgin Islands, May 20, 1947. Moore, D. J.

Because of difficulties regarding enforcement of the U. S. immigration laws in the Virgin Islands prior to the assumption of their administration by the Immigration and Naturalization Service, the latter issued a regulation that for re-entry purposes aliens who entered the Islands prior to July 1, 1938 should be presumed to have been admitted for permanent residence even though no record of their admission could be found. Petitioners for naturalization sought to avail themselves of this provision to establish the lawfulness of their entry for purposes of the required period of residence. The court held that the regulation was inapplicable, that legal admission for permanent residence must precede the required period of residence, and that naturalization could not be obtained until the expiration of the statutory period after a duly recorded entry.

Jurisdiction—ports—sabotage on foreign vessels.

In *The Mongioia*, 73 F. Supp. 17 (S. D. Texas, May 27, 1947, Kennerly, D. J.) an Italian merchant vessel seized for attempted sabotage in an American port in the spring of 1941, requisitioned by the United States pending trial of forfeiture proceedings for sabotage, and destroyed for scrap when in danger of sinking, was held forfeited to the United States under the Espionage Act of 1917. Relying on *U. S. v. The Antoinetta*, 153 F. (2d) 138, the Alien Property Custodian was held to be vested with all rights of the Italian company which had owned the vessel. In *The Pietro Campanella—The Euro*, 73 F. Supp. 18 (D. Md., July 22, 1947, Chesnut, D. J.), two Italian merchant vessels sabotaged in Baltimore in March, 1941 were held not to be forfeited to the United States, since they had not been used as a "place of resort" for conspiracy or commission of an offense, but had merely been subjected to injury or destruction; the forfeiture provisions of section 3 of title 2 of the Espionage Act were held to be limited to the former offense. The Alien Property Custodian, however, was held entitled to all rights of the Italian owners, subject to determination of the rights of counsel.

Aliens—deportation—Administrative Procedures Act inapplicable.

UNITED STATES ex rel. TRINLER v. CARUSI. 72 F. Supp. 193.

U. S. District Court, Eastern District of Pennsylvania, June 18, 1947. McGranery, D. J.

A bill of review was brought to set aside a deportation order against a Swiss national who had entered the United States as a treaty merchant and had been found guilty of exporting industrial diamonds contrary to Presidential Proclamation 2413, on the ground that while in jail he lost his status as a treaty merchant. Petitioner claimed that the Administrative Procedure Act of June 11, 1946 (5 U. S. Code sect. 1009) gave him a right to a judicial determination as to his deportation. The Court dismissed the bill of review, holding that Congress could not be presumed to have intended to cover this situation in the Administrative Procedure Act.

The Court said: "The power to exclude and deport aliens stems from the authority of the United States as a sovereign nation and its authority over commerce with foreign nations. . . . The process whereby an alien obtains admission into the United States . . . is a lengthy one, and at its initial stages is subject only to administrative, and, ultimately, political controls. Thus, it has been pointed out that 'Key man in the administrative structure for admission of aliens is the United States consul abroad. With visas required for both immigrants and temporary visitors, and with power to issue visas vested in the consul, his consent is a necessary condition to any further action of the Immigration authorities in passing upon the eligibility

of the alien to entry.' Note, 39 Col. L. Rev. 502, 503. And, further, that 'It is probable that in the exercise of this power, the consul has absolute discretion and that the appeal against him is through diplomatic channels only' . . . , although this is not true of consular power to revoke visas already issued. . . . Under the statutes of 1917 and 1924, a detailed administrative procedure has been set up to handle the exclusion of aliens and the deportation of those already admitted into the country."

The court pointed to the great numbers of deportation cases, and the small proportion of these which in the past have come before the courts on habeas corpus, and held that Congress could not have intended to upset the existing procedures by providing for judicial rather than administrative proceedings.

Enemy aliens—Danzig nationals—nonrecognition of German seizure of Danzig.

U. S. ex rel. ZELLER v. WATKINS. 72 F. Supp. 980.

U. S. District Court, Southern District of New York, July 9, 1947.
Goddard, D. J.

Zeller was born in Danzig Dec. 26, 1914; entered the United States in 1936 on a Danzig passport; reported to the German Consulate in New York in September, 1939 for military service with the German Army; in 1942 and 1943 registered with United States officials as a German national and objected to military service in the American army on that grounds; in 1944 received subsistence money from the German government; and in 1945 requested repatriation to Germany. He was detained at Ellis Island as an enemy alien, and brought habeas corpus proceedings to determine the legality of such detention.

The court denied habeas corpus, pointing to the German law of 1939 concerning the reunion of Danzig with Germany under which Danzig nationals were declared to be German nationals. The court said: "The fact that the United States government may not have recognized the seizure of Danzig by Germany (see Hackworth's *Digest of International Law*, Vol. IV, p. 690, et seq.) is not material in determining the citizenship of this relator. United States ex rel. Schwarzkopf v. Uhl, 2 Cir., 137 F. 2d 898, 903.

"There was no inherent reason insofar as the relator was personally concerned which would have prevented him from becoming a German citizen if he desired and elected to do so. . . . The Circuit Court of Appeals of this Circuit in the Uhl case adhered to the view that if an inhabitant of a conquered or ceded territory departed before the annexation and has never elected to accept the sovereignty of the new government his allegiance is not transferred. . . . It is apparent that under the German law promulgated on the annexation of Danzig that this relator could become

a German national if he so desired. His record shows that he more than consented to becoming a German national. . . . It therefore is clear that the relator is properly detained as an enemy alien."

Treaties—Warsaw Aviation Convention—effect on local procedure of courts.

ULEN v. AMERICAN AIRLINES. 7 F.R.D. 371.

U. S. District Court, District of Columbia, July 14, 1947. Morris, J.

In an action for injuries due to an airplane crash in Virginia while en-route to Mexico, plaintiffs moved for summary judgment in their favor except as to amount of damages. Defendant airline contended, inter alia, that Article 20 of the Warsaw Convention signed Oct. 12, 1929 (49 Stat. 3000) provided that the carrier should not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible to take such measures, and that the carrier should not be "shut off from its defensive rights" under that article by the Federal Rules of Civil Procedure. Although summary judgment was not allowed because of a substitution of counsel for the defendant and the latter's request to file an amended answer, on the treaty point the court said: "Surely that treaty was not intended to fix the procedures by which a competent court could, under its recognized rules, determine whether or not there were genuine questions of facts to be tried by a jury."

Naturalization—effect of claiming exemption from military service.

IN RE MARTINEZ. 73 F. Supp. 101.

U. S. District Court, Western District of Pennsylvania, July 23, 1947. Gourley, D. J.

Naturalization was denied a Spanish national who entered the United States in 1917, who when drafted in 1942 claimed exemption as a neutral alien, who two weeks thereafter applied for voluntary induction in the military forces and underwent a major operation in an endeavor to meet the physical requirements, and who while awaiting induction was relieved from liability to service by the regulation relieving all men over 38. Thereafter in 1944 he filed his declaration of intention to become a citizen, and in 1946 petitioned for naturalization. In addition to provisions of the Selective Service Act under which his application to be relieved from service barred him from thereafter becoming a citizen, the court held that he had failed to show his attachment to the principles of the Constitution. Rejecting as insincere his statement that he did not understand the nature of the form he executed in applying for exemption, the court added: "It is my belief that those who came to America, not as mere sojourners, but with

the intention of remaining here, making this land their home, availing themselves of the protection afforded by this government, and enjoying the opportunities derivable by virtue of its protecting care, owe at least a moral obligation to assist this government whenever it should be in need of their service. In consequence, with respect to those falling in that category who claimed exemption from the draft during World War II on account of the fact that they were citizens of a neutral country, whether they had previously executed a Declaration of Intention to become a citizen or not, I believe should be denied American citizenship on the ground of want of loyalty."

(See also *In re Samowich*, 70 F. Supp. 273 (W. D. Wash., Mar. 14, 1947, Leavy D. J.).)

Nationality—expatriation.

SAVORGNAN v. UNITED STATES. 73 F. Supp. 109.

U. S. District Court, Western District of Wisconsin, Sept. 10, 1947. Stone, D. J.

Plaintiff was entitled to a declaratory judgment that she is an American citizen. She was born in Wisconsin in 1915; at the request of her fiancé (in the Italian diplomatic service here) applied in August, 1940 to the Italian Consulate in Chicago for Italian citizenship in order to get the Italian Government to consent to their marriage; at her fiancé's request signed on Nov. 23, 1940 an application and oath of allegiance in Italian, which she did not then read, write or understand; married Dec. 26, 1940; and on July 15, 1941 left for Italy when Italian consular officers were ordered to leave the United States. In 1944 on the entry of American forces into Rome, she identified herself with them and was employed by the Allied Control Commission. She returned to the United States on an Italian diplomatic passport when she could not obtain an American passport.

In holding that she had not lost American citizenship, the Court pointed out that the documents signed in the United States were before Italian officials rather than American officials, and that it was satisfied that she had no present or fixed intent to expatriate herself when she signed them. It stated: "If plaintiff, at the time she executed [these documents] . . . did not know or realize that she was renouncing allegiance to this country, her action was unintentional and of no validity. Intention is a fact to be proven. . . . Forsaking her country, departing therefrom, and knowingly renouncing her allegiance to it are essential requirements to expatriation. The plaintiff did not knowingly renounce or relinquish her American citizenship and is entitled to judgment declaring her to be an American citizen."

Jurisdiction—foreign state as plaintiff.

SWISS CONFEDERATION v. UNITED STATES. 70 F. Supp. 235.

United States Court of Claims, Mar. 3, 1947. Whitaker, J.

The Swiss Confederation sued in the Court of Claims for the amount which, added to that already paid, it regarded as just compensation for certain toluol belonging to that Government which was requisitioned by the United States on Nov. 5, 1941. Judgment was rendered for the plaintiff, though for a lesser valuation than claimed. The Court held that a foreign government was entitled to sue in the Court of Claims on all claims of a nature on which an individual might sue the United States, although the statutes giving jurisdiction to that Court made no mention of foreign governments as suitors. The Court said: "A foreign government might be unwilling to submit itself to the jurisdiction of the courts of the United States, but if it is willing to do so, we can conceive of no reason why Congress should have intended to prohibit a court established by it from giving to the foreign government the same redress which would be accorded to any other litigant."

International claims—right to payment of award.

DRIER v. UNITED STATES. 70 F. Supp. 888.

United States Court of Claims, Apr. 7, 1947. Jones, J.

Plaintiff's action to recover from the Treasury the amount of a claim against Germany considered by the Mixed Claims Commission, based on a private law of July 19, 1940 (54 Stat. 1341), was dismissed after consideration of the legislative history of the private law.

International organizations—immunities of officials—taxes—League employee.

JOHN H. CHAPMAN v. COMMISSIONER OF INTERNAL REVENUE.

9 T.C. No. 87.

United States Tax Court, Oct. 9, 1947. Murdock, J.

A League of Nations official carrying on statistical work for the League at Princeton from 1940 to 1946 claimed exemption from United States income tax. The Tax Court held that his salary and allowance for living expenses were subject to taxation. The Secretary of State had refused to certify to the Treasury Department that for the taxable years in question each of the 45 members of the League, or the League itself, satisfied the requirements of section 116 (h) of the Internal Revenue Code, which exempts from income taxation the salary of an alien employee of a foreign government if the services rendered by the employee are similar to those performed abroad by employees of the United States Government and if the foreign government grants an equivalent exemption to United States Gov-

ernment employees. The Court held that the League was not a foreign government, and added: "The petitioner has not shown that employees of the Government of the United States performed services in foreign countries similar to those performed by the petitioner in this country or that any basis for reciprocal exemption from tax exists. . . . Section 116 (h) was not designed or intended to cover a case like the present one." This conclusion was confirmed by the enactment in late 1945 of the International Organization Immunities Act, extending the exemption to employees of an international organization.

Harron, J., in a concurring opinion (joined in by Johnson, J.) dealt with petitioner's argument that Congress could not have intended to apply the tax laws in a manner inconsistent with the requirements of international law. He said: "A realistic view must be that the Congress, in considering and enacting domestic or internal legislation, was not thinking anything about the possible conflicts or harmony with principles of international law. . . . And even the argument about the possible influence of principles of international law runs against the fact that petitioner, although an official of the League of Nations with a diplomatic status under Article 7 of the Covenant of the League, was not sent here on an official mission to or with the *Government* of the United States. Without credentials to our Government on some diplomatic mission, or official, even assuming diplomatic status to exist from the standpoint of the League, petitioner would appear to be in no better position than a person of diplomatic status in the territory of another state than that to which he is accredited. It would appear that the Government of the United States is not under any obligation, under international law or treaty or act of Congress, to grant the *immunity* from taxation of income which is really what petitioner desires. See Ogdon, *Juridical Bases of Diplomatic Immunity*, 1936, pp. 189-191.

"The Congress has declared the position which the Government must take with respect to the League of Nations in the statute authorizing the United States to accept membership for the Government of the United States in the International Labor Organization, an international organization which was under the League. The statute, enacted June 19, 1934, provides: 'But in accepting such membership the President shall assume, on behalf of the United States, no obligation under the Covenant of the League.' 48 Stat. 1183."

Treaties—effect as local law—U.N. Charter and discrimination.

SIPES v. MCGHEE. 316 Mich. 614; 25 N.W. (2d) 638.

Supreme Court of Michigan, Jan. 7, 1947.

A restrictive covenant against the occupancy of certain land by persons not of the Caucasian race was held valid, despite the contention that the

United Nations Charter established a policy against upholding such covenants. The court said on this point:

"Some of the briefs go so far as to insist, that the declarations of the Atlantic Charter and the United Nations' Conference at San Francisco are international treaties and have the effect of law.

"We do not understand it to be a principle of law that a treaty between sovereign nations is applicable to the contractual rights between citizens of the United States when a determination of these rights is sought in State courts. So far as the instant case is concerned, these pronouncements are merely indicative of a desirable social trend and an objective devoutly to be desired by all well-thinking people. These arguments are predicated upon a plea for justice rather than the application of the settled principles of established law."

Treaties—effect as local law—U.N. Charter and discrimination.

KEMP v. RUBIN. 69 N.Y.S. (2d) 680.

New York Supreme Court, Queens Special Term, Feb. 11, 1947, Livingston, J.

The Court upheld the validity of a covenant against conveyance of certain land to any Negro. Passing upon one objection raised against the validity of such a covenant, the court said: "Defendant's remaining contention that enforcement of the covenant is forbidden by existing treaties to which the United States is a signatory is without force. These treaties have nothing to do with domestic matters nor with agreements between citizens of the United States. In fact, Article 2, Section 7, of the United Nations Charter . . . expressly so provides."

Recognition—effect of acts of unrecognized government.

A/S MERILAIID & CO. v. CHASE NAT. BANK OF CITY OF N.Y. 71 N.Y.S. (2d) 377.

Supreme Court, Special Term, New York County, May 16, 1947. Koch, J.

In 1940, prior to the Soviet occupation of Estonia, plaintiff, an Estonian corporation, deposited a sum in defendant bank in New York. After the Soviet absorption of Estonia, the Estonian S.S.R. purported to nationalize plaintiff corporation and transfer its assets to an Estonian state corporation. In 1945 a meeting of a majority of the shareholders of plaintiff was held in Stockholm, where the seat of the corporation was transferred. Action was there taken to authorize the withdrawal of the deposit. Defendant bank refused to pay over the deposit, having received cabled instructions to transfer it to Soviet Banks.

Held: Judgment for plaintiff. The court said in part: "The property involved in this action is located in New York where the contract relation

was originated. . . . The public policy of the State determines when the foreign legislation will apply, and a decree which is contrary to that policy will not be given effect. . . .

"The nationalization decree of the present regime in Estonia goes beyond the ordinary legislation regulating every day transactions of business. It is confiscatory in effect and contrary to the public policy of this State. In addition to this the government of the United States does not recognize the incorporation of the Republic of Estonia into the Union of Soviet Socialist Republics, and it has refused to recognize the Estonian Soviet Socialist Republic. The legality of the nationalization laws and decrees or of any of the acts of the regime now functioning in Estonia is not recognized by the government of the United States."

The court also held that the Freezing Controls under Exec. Order 8389 did not affect plaintiff's title.

Treaties—interpretation—relation to inconsistent state statute.

ANTOSZ v. STATE COMPENSATION COM'R. 43 S.E. (2d) 397.

Supreme Court of Appeals of West Virginia, June 10, 1947. Riley, J.

A Polish national lost his life Jan. 4, 1946 while working for a coal company in West Virginia. His widow, a Polish national resident in Poland, sought Workmen's Compensation in West Virginia, which was denied by the Workmen's Compensation Appeals Board on the ground that the West Virginia laws, as amended in 1945, provided that no benefits should be paid to nonresident aliens. The widow appealed, relying on Article II of the Treaty of Friendship, Commerce and Consular Rights between the United States and Poland signed June 15, 1931 (48 Stat. 1507). This article provided that "With respect to that form of protection granted by National, State, or Provincial laws establishing civil liability for injuries or for death, and giving to relatives or heirs or dependents of an injured party a right of action or a pecuniary benefit," such heirs or relatives or dependents should if nationals of Poland have the same rights as nationals of the United States.

Held: Reversed, the statute being invalid in this case as in violation of treaty, which is the supreme law of the land. The Court said:

"It is well at this time to restate some of the cardinal rules which govern the interpretation of treaties. The primary rule is that the treaty shall be liberally construed, so as to carry out the intention and purpose of the contracting parties thereto, and to secure equality between them. . . . But such construction should not be extended so as to infringe upon the Constitution of the United States, or to invade the province of the States of the Union in matters inherently local, or to restrict the various states in the exercise of their sovereign powers."

He added: "In the recent case of *Micaz v. State Compensation Commissioner*, 123 W. Va. 14, 13 S.E. 2d 161, this Court, following the case of *Liberato v. Royer*, 270 U.S. 535 . . . in appraising Article III of the treaty of 1871 between the United States and Italy, 17 Stat. 846, as amended in 1913, 38 Stat. 1669, 1670, held that the treaty did not render the statute unconstitutional as applied to the case of nonresident Italian national beneficiaries. It is to be noted, however, that unlike the Polish treaty, the Italian treaty simply established 'a civil responsibility for injuries or for death caused by *negligence or fault* and gives to relatives or heirs of the injured [or deceased] party *a right of action*' (italics supplied), whereas the Polish treaty establishes a 'civil liability for injuries or for death, and giving to relatives or heirs or dependents of an injured party *a right of action or pecuniary benefit*' (italics supplied) without regard to fault or negligence." Therefore, the Court said, workmen's compensation, although admittedly the result of contract, is covered by the alternative "a pecuniary benefit" which is absent from the Italian treaty. This was strengthened by the fact that Article XXIII of the Polish treaty provided that consular officers might represent nonresident beneficiaries before authorities "administering workmen's compensation laws and other like statutes."

OTHER CASES, NOT SEPARATELY DIGESTED, INCLUDED:

Aliens—deportation:

- DiPasquale v. Karnuth*, 158 F. (2d) 878 (C.C.A. 2d, Jan. 11, 1947).
- U. S. ex rel. Bishop v. Watkins*, 159 F. (2d) 505 (C.C.A. 2d, Jan. 15, 1947).
- U. S. ex rel. Volpe v. Jordan*, 161 F. (2d) 390 (C.C.A. 7th, Feb. 12, 1947).
- Fong Haw Tan v. Phelan*, 162 F. (2d) 663 (C.C.A. 9th, June 25, 1947).

Aliens—exclusion:

- U. S. v. Hoy*, 330 U. S. 724, 67 Sup. Ct. 1004 (Apr. 7, 1947).
- Bonham v. Bouiss*, 161 F. (2d) 678 (C.C.A. 9th, May 7, 1947).

Nationality: Application of *Yuen Loo Wong*, 73 F. Supp. 16 (D. Hawaii, Sept. 10, 1947).

Naturalization:

- United States v. Kunz*, 163 F. (2d) 344 (C.C.A. 2d, July 28, 1947).
- United States v. Borchers*, 163 F. (2d) 347 (C.C.A. 2d, July 28, 1947).
- Petition of Zigalniksky*, 72 F. Supp. 987 (S.D.N.Y., June 23, 1947).

Treaties: *Cervantes v. United States*, 163 F. (2d) 294 (C.C.A. 9th, Aug. 21, 1947).

War—enemy property and trading with the enemy—A.P.C.:

U. S. v. Krepper, 159 F. (2d) 958 (C.C.A. 3d, Dec. 11, 1946); cert. den. 67 Sup. Ct. 865 (Mar. 3, 1947).

Kind v. Clark, 161 F. (2d) 36 (C.C.A. 2d, Apr. 9, 1947).

Cabell v. Clark, 162 F. (2d) 153 (C.C.A. 2d, May 26, 1947).

Markham v. Taylor, 70 F. Supp. 202 (S.D.N.Y., Jan. 21, 1947).

Kaname Fujino v. Clark, 71 F. Supp. 1 (D. Hawaii, Apr. 22, 1947).

Alley v. Clark, 71 F. Supp. 521 (E.D.N.Y., May 1, 1947).

Clark v. E. J. Lavino & Co., 72 F. Supp. 497 (E. D. Pa., June 30, 1947).

In re Malgor's Estate, 176 P. (2d) 66 (Calif. App., Jan. 6, 1947).

In re Thramm's Estate, 183 P. (2d) 97 (Calif. App., July 8, 1947).

War—enemy aliens—removal:

U. S. ex rel. Jaegeler v. Carusi, 72 F. Supp. 805 (E. D. Pa., July 15, 1947).

BOOK REVIEWS AND NOTES

Recognition in International Law. By H. Lauterpacht. Cambridge: The University Press (New York: The Macmillan Company); 1947. Pp. xix, 435. Index. \$5.50.

The theory of recognition in international law has traditionally been set forth in terms of constitutive or declaratory doctrines. Dr. Lauterpacht's approach is that of an eclectic as shown by his assertion that "although recognition is declaratory of an existing fact, such declaration, made in the impartial fulfilment of a legal duty, is constitutive, as between the recognizing state and the community so recognized, of international rights and duties . . ." (p. 6). The author considers his subject under the customary headings of recognition of a new state, of new governments, and of belligerency and insurgency, but marshalls his evidence to prove that the "practice is that governments base their attitude in matters of recognition not on any rights to follow their own particular interests, but on principles derived from general considerations of international justice and utility" (p. 16).

As far as this reviewer is aware, Professor Lauterpacht's consideration of the problems incident to recognition of belligerency and insurgency (pp. 175-329) is the only extended treatment in English of the rules of international law applicable to conditions of civil strife. Also noteworthy is his frequent use of chapter appendixes containing hitherto unpublished material from British official documents on pertinent phases of recognition.

Despite the adroit manner in which Professor Lauterpacht argues for the right of a new state, government, or insurgent community to demand recognition, once the requirements of international law are met, it is difficult to accept his conclusion that the right exists. For instance, it is generally accepted that the interest of outside states is a legally relevant factor in granting belligerent recognition, and it is so accepted by the author (p. 183). Yet the test of a state's interest is a subjective test, implying the ultimate discretion of a power to grant or withhold recognition as its interest dictates. To urge that "recognition of belligerency is permissible and—given the existence of other factual requirements—obligatory when the interests of outside states are involved in such a manner as to necessitate a definition of relations" (p. 240) hardly furnishes a definite and objective criterion for basing a grant of belligerent rights *sans* discretion. The reviewer believes that the conclusion of Judge McNair is more consonant with current realities. He held that "those who assert that insurgents satisfying the conditions which would justify a foreign state in granting them recognition of belligerency have a legal right to it have not made out their case" (*Law Quarterly Review*, liii, 478).

Recognition of belligerency is a rather rare phenomenon, as is evidenced by the fact that neither the United States nor Great Britain have had occasion to grant it since the American Civil War. Professor Lauterpacht, however, does manage to find one or two questionable and exotic applications since 1861 in Anglo-American practice, such as the British recognition of the belligerency of the Bonny River chieftains in their revolt against Chief Ja Ja in 1870 (p. 180). The author's explanation of the causes for the relative infrequency of recognition of belligerency fails to include any consideration of the relationship which the changing concept of neutrality has to the reluctance of outside powers to declare themselves neutral (the normal manner in which foreign powers recognize belligerency) in cases of civil conflicts.

Students of the subject will welcome Dr. Lauterpacht's clarifying study of the "recognition of insurgency" and the international rights and duties subsumed under such a status. It is to be regretted that the Cambridge Whewell Professor did not apply his great erudition to a more systematic examination of the relationships of the whole concept of recognition and non-recognition to the problem as seen from the viewpoint of the organized world community. Such treatment as the author gives to the matter in this respect seems incidental. Those who seek for an international law which will become increasingly adaptable to the ends of this community will find this omission disappointing.

ROSCOE OGLESBY

Oklahoma A. & M.

Principios Normativos del Derecho Internacional Publico. By Teodoro Alvarado Garaicoa. Guayaquil: Imprensa de la Universidad; 1946. Pp. 395.

This volume, written by a professor holding the chair of international law in the University of Guayaquil, follows the traditional lines of treatises on international law, but at the same time emphasises the special problems peculiar to the Inter-American regional system and in particular the point of view of the Government of Ecuador. In the course of a long history of the development of international law the author gives a survey of successive Inter-American conferences and of various doctrines which he describes as "American international," although the author makes no attempt to reconcile the conflicting principles presented by the different doctrines, as, for example, the apparent conflict between the Tobar Doctrine and the rejection by Ecuador of the Larreta Doctrine. The doctrine of non-intervention is discussed, and the author is of the opinion that the Conference of Buenos Aires of 1936 laid down the correct principle, at the same time confiding cases of possible violation to a consultative meeting of Foreign Ministers. Under the head of "The New Reciprocity" the author

includes the policy of trade agreements inaugurated by the United States. Two of the closing chapters deal in general terms with the interesting question of the application of international law to civil wars—a problem which still awaits the development of more constructive rules. In discussing the “new tendencies of international law” the author lays stress upon the necessity of international organization and the development of rules of coöperation representing the essential unity of the community of nations. Absolute sovereignty is an anomaly. The true function of international law is to create and maintain an organ capable of enforcing the fulfillment of international obligations.

CHARLES G. FENWICK

Of the Board of Editors

El Derecho Internacional Publico antes de la Era Cristiana. By Isidoro Ruiz Moreno. Buenos Aires: Faculty of Law and Social Sciences; 1946. Pp. 554.

This large book by the well-known Argentinian student of international law treats the problem of the existence of international law prior to the Christian era. It is heavily documented, treats an interesting problem, and is an excellent work. The first part states the problem and surveys its status in literature. The majority of writers deny the existence of any such law. Ruiz Moreno analyzes Laurent's *History of the Law of Nations* and shows that Laurent's thesis of the non-existence of international law in pre-Christian times is contradicted by many passages in the work of Laurent itself. Most later scholars have adopted this negative attitude. Some writers take an eclectic attitude: they restrict the existence of international law in ancient times to Greece and Rome, or admit only a sporadic, fragmentary, embryonic international law, or deny its legal character. Ruiz Moreno finally discusses the authors who affirm the existence of a pre-Christian international law: Nys, Heffter, Philipson and, especially, Korff and Taube.

In full agreement with this last group of authors, Ruiz Moreno affirms the existence of pre-Christian international law. But his task is not only to affirm its existence but also to show that the arguments made for its non-existence are untenable. Protestant writers thought international law to be only a creation of the Reformation, whereas Catholic writers believed that international law could come into existence only with Christianity. Others claimed that the creation of international law has been the privilege of Europe. Others, finally, relied on the alleged complete isolation of pre-Christian States, on their xenophobia, or on the trend toward a universal monarchy. The negative attitude is untenable, the supposed arguments are the consequence of fallacies, of prejudices, and of ignorance: not only to affirm, but to prove that this is so, to prove it by abundant, uncontra-

dictable evidence, is the task which the author has set for himself. This proof can be given not only through the analysis of religious, literary, and scientific works, but the progress of archeology, the discovery of hieroglyphs, of the great libraries in cuneiform writing, papyri, monuments and so on, has made such proof overwhelming.

The task of proving his positive thesis is conducted by two methods. To refute the traditional thesis of complete isolation, the author shows in the second part of his book that international relations on a broad scale—international relations in the cultural, religious, political, and economic field—did exist at all times, from the Sumerian period onward, 3000 years B.C. and, perhaps, earlier. Making use of a great bibliography of general historical works and specialized monographs, the author presents this proof, by no means restricted to classic Greece and Republican Rome, but takes into consideration the Sumerian, Egyptian, Hittite, Babylonian, Assyrian, Phoenician, Egean, Homeric, Biblical times as well as ancient India, China, Japan, and pre-Columbian America.

The second method of proof consists in showing that institutions and rules of international law existed at all these periods. He discusses, for this purpose, the whole law of peace and war.

From these abundant proofs the author draws the theoretical conclusion that international law is not a privilege of Christianity or of Europe; that it is as old as human culture (and perhaps older—the “intertribal law”), that it has always existed at all times and on all continents, that it has many similarities with the modern law of nations, that basic institutions and rules, such as the distinction between a law of peace and of war, the international responsibility of states, the sanctity of treaties, the inviolability of ambassadors and so on, are identical. On the other hand he admits the great differences, as, for instance, the absence of the concept of a universal international community.

There is, however, one point, as it seems to this reviewer, which is not clear in this book. It is perfectly true that the thesis which dates our international law from 1648 is untenable. The modern law of nations was developed in 13th century Italy, as has been shown by Balladore Pallieri and Sereni. International law did exist in pre-Christian times, but it was not our international law. A comparison with the development of municipal law will make this point clear.

The present-day law of England and the United States is the Common Law, dating from the Norman Conquest. The history of the law of England is the history of the Common Law. But the history of law in England is the history of three laws: Roman, Anglo-Saxon, and Common Law. To study their similarities and differences is the task of comparative law. Thus the history of our modern law of nations dates from the 13th century. But there did exist, as the author proves, other regional international laws. To treat them is not to give the history of international law, of our

international law, but the history of different systems of international law. To study their similarities and differences, to explain the past, and, perhaps, to prepare the future, is a part of the science of comparative law. This comparative research, little developed until now, may be called comparative international law.

JOSEF L. KUNZ

Of the Board of Editors

L'Occupation Allemande Pendant La Dernière Guerre Mondiale. By Jonkheer C. M. O. van Nispen tot Sevenaer. The Hague: Martinus Nijhoff; 1946. Pp. xii, 324. Annex and indexes. 12 guilders.

This is an ardent book. It is an earnest and vehement plea by a lawyer. Much of it was written while the author lived under the German occupation of the Netherlands. Despite the title there is no detail here about World War II; there is considerable discussion of precedents in World War I. This book is not, however, a collection of data for the positivist, although it is well documented and annotated. It is rather a philosophical essay for the moralist. In large part it is a disquisition on the theory of government. Compared to Feilchenfeld's recent valuable monograph on belligerent occupation this volume, even in its form of organization and presentation, is in the style of the classical writers of the seventeenth and early eighteenth centuries. These observations are in no sense derogatory. This is a book which repays reading by anyone interested in the theory of international law and in its anterior theoretical, moral, and juristic bases. It calls for careful reading as a whole although there is much repetition, largely by way of constant cross-reference, recapitulation, and emphasis. The author is likely to be misrepresented by any one who opens the book at a particular page and quotes a passage without carefully studying its context. Yet the author offers the reader constant aid: the first chapter is a summary and a preview of the five major parts of the book; in the table of contents each chapter number is followed by a brief synopsis of the contents; every section has an illuminating caption; each chapter contains a section labelled "Conclusion."

The volume is devoted mainly to an analysis of the basic character of the authority of a belligerent occupant. The larger part of the discussion focusses around Article 43 of the Annex to the Fourth Hague Convention on the laws and customs of war on land. It will be recalled that this article provides:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Jonkheer van Nispen tot Sevenaer analyzes in detail the phrases in this article. He examines its antecedents in the Brussels Conference of 1874 and the debates which took place there and, later, at The Hague. Fundamentally he explores the juridical and moral bases of governmental authority. He denies that such authority can ever be founded on injustice, on brute force. Legitimacy of power is determined by the community over which the power is exercised. International law, whether customary or as embodied in the Hague Convention, does not confer authority upon the occupant; they rather impose limitations upon the exercise of his physical *de facto* power. The occupant accordingly does not enjoy the rights of legitimate authority. As a corollary of this proposition the citizens of the occupied country have no duty to obey the occupant and the ousted legitimate government has no duty to respect the occupant's acts. Nevertheless if the occupant enacts measures which conduce to the welfare of the community these measures may be obeyed and may even be ratified by the legitimate government upon its restoration. The author also agrees that if the inhabitants of the occupied territory resist those measures of the occupant which are taken in conformity with the Hague Regulations, they thereby release the occupant from the duty of respecting their personal situations. In this connection the author produces interesting passages relative to the nature and effect of collaboration with the occupant under various circumstances. Passages of current practical importance are devoted to the property rights of third parties in whose chain of title some act of the occupant forms a link. Here it is important to note that the author concedes the point that the occupant may take certain action in conformity with his military requirements.

One would expect in such a discussion a constant emphasis upon the distinction between just and unjust wars. Such a distinction is indeed noted in the preparatory summary and is developed especially in the last chapter, but in the body of the book it sometimes seems to be overlooked. The author asserts that in an unjust war all acts of invasion are devoid of legal basis; every homicide is a murder and every requisition a theft. But he admits that the Hague Conventions did not distinguish between just and unjust wars. He deals in only a fragmentary way with the modern doctrines, based on the Briand-Kellogg Pact, the Covenant, and the Charter, and points out that there is still a gap in the international machinery for judging such fundamental questions. Naturally, but without the systematic logic of most of his arguments, the author concludes that there is no question but that Germany waged an unjust war in 1939 and the following years. He appears to argue that the belligerent occupant who is waging a just war has inherently an unlimited right equivalent to that of the legitimate authority. The right of the just occupant, however, stems not from his power, but from the justice of his cause. This inherent right of the just occupant is nonetheless limited contractually by the Hague Convention.

This volume is not an occupying authority's handbook but it is a valuable aid to those who are now officially concerned with the aftermaths of occupation.

PHILIP C. JESSUP

Of the Board of Editors

La Fonte Suprema dell'ordinamento internazionale. By Giuseppe Sperduti. Milan: A. Giuffrè, 1946. Pp. 229.

Like the book by Ziccardi (see review in this JOURNAL, Vol. 41 (1947), pp. 489-491), the book under review is dedicated to a search for the highest source of international law. The author starts from the doctrine of the "basic norm," as developed independently by Perassi and Kelsen. The author praises Kelsen's "basic norm" as a new and one of the most fruitful doctrines of the science of law, a doctrine which has gained enormous influence and undergone different developments at the hands of different writers. Kelsen's basic norm aims at overcoming the 19th century legal positivism, at finding the source of validity of positive law. It serves different purposes: as the source of validity, as the origin of the creation of a legal order, and as a criterion for the cognition of law. But the author cannot follow this doctrine. He points out its fundamental antinomy—as Recaséns Siches and García Maynez had done long before: It is neither a norm of positive law, nor has it metaphysical consistency, and yet it must be thought of as an objective norm, since, in consequence of the strict separation of "oughtness" from "isness," law can never derive from a fact. It is a logical presupposition, in harmony with Marburg Neo-Kantianism.

Neither can the author follow the transformation which Kelsen's "basic norm" has encountered at the hands of Verdross, who made it from a hypothesis into an absolute, from a logical into an ethical, norm and thus made natural law the basis of positive law, by his attempt to found the law meta-empirically in the realm of objective values. Nor can the author share Ross's attempt to found the law empirically, by seeing the basis of positive law in the social totality to which it refers. Untenable is, finally, the construction of Ziccardi, according to whom the "basic norm" must be a positive legal norm.

It has no meaning, the author tells us, to speak of the "basic norm" either as of a positive norm (Ziccardi) or as of a norm of objective values pertaining to a meta-empirical system (Verdross); for in the latter case the autonomy of the law would be lost. The author believes that it is possible to base the validity of the law on what he calls the "idea of social dutifulness" (*idea della doverosità sociale*), conceived as an element of the spiritual possession of humanity. Contrary to the idea of justice, this idea has an ontological, not an axiological consistency, and relates not to

the contents, but to a constant quality, of the law. Such foundation, he believes, is immune from a juridical-ethical syncretism. From this idea, according to the author, the law is derived, whereas ethics stems from the idea of justice. True, he admits, as both ideas coexist in the human mind, the ethical system will be, in the words of Del Vecchio, "an ideal model of the positive law," but as the two ideas cannot be derived from each other, the formal autonomy of the two systems remains unimpaired. "Positive law," the author defines, "is every system of normative propositions, juridical in structure, which responds to the idea of social dutifulness" (p. 115). Whether this idea is an original product of the human mind, or a reflection of a transcending realm of values, the jurist needs not investigate.

On this basis the author starts his investigation into the highest source of international law. Custom, contrary to Ziccardi, cannot be this highest source; primarily for the reason that the highest source must be unitarian, whereas custom is not only the source of general, but also of particular, international law. The highest source of international law is for the author "pre-juridical custom," as the process through which the international community organizes itself fundamentally. The highest source is "the normative fact of effective auto-organization." It is not a historical event. It is a "fact of continuing normativism." It is the concept of the highest source; a different problem is the investigation of the historical concretization of this highest source at a given historical moment.

From the point of view of critique, this reviewer appreciates also in this book the virtues of the Italian School of international law. But the construction of the author, concerning the "idea of social dutifulness" is not convincing and leads him, in any case, beyond the positive law. True, the author says, that the science of law consists of dogmatic and pre-dogmatic investigations. It seems also philosophically hardly tenable to derive ethics from the idea of justice. Justice basically contains the element of proportionality; it is the highest of the juridical values, it is a norm of conduct *ad alterum*, whereas ethics regulates the full life of the individual. Justice is the highest of the juridical values; but the latter are, according to the modern theory of values, lower in rank than the ethical values.

There is one last remark which, coming from this reviewer may perhaps, be surprising: namely, criticism of the abstract theorizing of the Italian School. True, *vis-a-vis* those who suffer from excessive practicality, it is necessary to underline, as this reviewer often does, that there is no practice without theory and that in the relations between them it is theory which holds the commanding position. But the Italian School suffers from the opposite malady, "pure theorizing"; the Italians, as Rabel said of the Italian theory of the Conflict of Laws, work exclusively in a hyper-refined abstract theory, enjoying, so to speak, a scholastic pleasure in formulae

and dialectical arguments. It seems necessary to emphasize in this case that theory, however important and superior in rank, does not exist for theory's sake, but always with respect to practice, that the value of a theory must be proved by giving us a satisfying scientific construction of reality. It is, therefore, comforting to read in the preface that the results of this theoretical investigation will be the starting-point of the author's coming investigation of the general organization of the international community.

JOSEF L. KUNZ

Of the Board of Editors

Le préambule de la Charte, base idéologique de l'O.N.U. By André Salomon. Geneva-Paris: Editions des Trois Collines; 1946. Pp. 229.

The Preamble of the United Nations Charter, rich in general professions of faith and poor in normative contents, has been subjected by the author to a penetrating juridico-technical analysis with the disappointing results that were to be expected. The cornerstones of the whole edifice are justice, legal equality of states, and the rights of man. Now as to the rights of man it is clear to the author that the relevant statements in the Preamble have only declaratory—or shall we say “proclamatory”—and no normative value. The professed legal equality of states is contradicted by numerous—the author counted altogether nineteen—provisions of the Charter the cumulative effect of which is the establishment of an effective hegemony of the Big Five. The idea of justice is balanced in the Preamble itself by the determination to respect international obligations. The author, who finally consoles himself with the thought that justice is, or should be, the guiding star of the United Nations, is aware, of course, of the fact that what we shall see in practice is not ideal justice but justice as interpreted and applied by the organs and the members of the United Nations.

Branching off into the neighboring Purposes and Principles of the Charter, the author argues that paragraph 6 of Article 2 is of exceptional interest and indeed enunciatory of a novel doctrine. By relating paragraph 6 to the preceding paragraph 5 the author intends to show that neutral non-member states are bound not merely to tolerate passively interference with their neutrality. They are above all bound to give the United Nations, according to the terms of paragraph 5, “every assistance in any action it takes in accordance with the present Charter.” It is a pity that the author did not think it worth while to explain how so radical a departure from international law can be reconciled with the determination “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.”

The exception of domestic jurisdiction in Article 2, paragraph 7, is subjected to a devastating critique. In an attempt to safeguard the in-

tegrity of the Preamble, the author points out that in spite of the far-reaching character of this exception the ideological foundation of the United Nations is not limited in any sense. He does, however, admit—and this is from a practical viewpoint more important—that Article 2, paragraph 7, may prove a dangerous limitation upon the effective application of this ideology. This no doubt was intended by the authors of the Charter. “If the Big Five,” says Mr. Salomon, “have arrogated to themselves the veto power with respect to all question of international interest then Article 2, paragraph 7, creates a veto power which each state may exercise with respect to any question within its domestic jurisdiction.” There appears to be more equality of nations, large and small, in the Charter than one suspected. Mr. Salomon has made an interesting and useful contribution to the study of the Charter. His arguments are well documented by quotations from the proceedings of the San Francisco Conference. It is valuable as one of the first monographic treatments of the Preamble and some related articles of the Charter.

LEO GROSS

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Occupation of Germany, Policy and Progress, 1945-46. Washington: Department of State; 1947. Pp. viii, 241. Appendixes.

This is the official progress report on American occupation in Germany down to the end of 1946. It is still timely, however, for it sets forth our official policy, covers (though very briefly) the developments in this policy and its operation in practice down to 1947, and includes numerous charts, graphs, and 170 pages of key documents, including, for instance, the famous JCS 1067, the Potsdam Agreement, Secretary Byrnes' Stuttgart speech of September 6, 1946, the directives concerning denazification, and many others. In fact the appendixes alone make this an indispensable little source book for all those interested in the problem of Germany.

One should not expect much self-criticism from such a report, virtually an *apologia* (though a very restrained one) for American policies in Germany. Thus we are not surprised to note that while the report frankly admits certain failures, these, the reader is left to imply, are due mainly to *la force des choses* or to faulty policies on the part of other occupying powers. For a more objective study of the occupation, notably our own failings and failures, the recent work of Harold Zink is much more useful.¹

According to the report “the making of policy has been a continuing process since Pearl Harbor.” One wonders whether “continuing” is not a euphemism for “vacillating.” Among the highlights of the report we

¹ Harold Zink, *American Military Government in Germany*, New York: Macmillan; 1947, reviewed in this JOURNAL, Vol. 41 (1947), p. 976.

find reiterated the statement that according to the American view the western frontiers of Poland are still provisional. While maintaining that the physical disarmament of Germany is "largely completed," the report admits that moral disarmament has only just commenced. Denazification has been a "slow and difficult process," the policy of turning over this matter to German tribunals having proved admittedly unsatisfactory. The difficulties arising out of the repatriation of over six million Germans into a truncated state are also described. The economic problems of reconstruction are analyzed, particularly the delicate question of reparations. These grave problems are rendered more complex by the failure to achieve the economic unity envisaged at Potsdam, as well as by Soviet obstructionist tactics and her *ex parte* interpretations of previous agreements. A brief comparison is made of administrative policies in the four zones. The American policy is based on the conviction that "democratization can be achieved only through practical experience and the assumption by the Germans of direct responsibility for governmental action." Other sections concern the revival of political life, especially by encouraging the activities of political parties; the role of trade unions; and, finally, lumped rather significantly together in a brief section, education, information control, and religion.

According to the report the chief tasks for the future are: (1) the revival of German economy, which depends largely on a wise reparations policy; (2) the establishment of a new German state with a "genuinely democratic control"; (3) the elimination of Nazi social structure, mentality and culture; (4) the bringing of Germany into an international security system which "will consolidate the Allied victory and insure that Germany will never again menace the peace of the world."

JOHN B. WHITTON

Of the Board of Editors

The Chrysanthemum and the Sword. By Ruth Benedict. Boston: Houghton Mifflin, 1946. Pp. 324. Glossary. Index. \$3.00.

Star-Spangled Mikado. By Frank Kelley and Cornelius Ryan. New York: McBride, 1947. Appendices. Pp. 282. \$3.50.

When one returns to the United States from a period of service with occupation forces in Japan he cannot escape a feeling of unreality. It is not the bewilderment and sense of the near-grotesque which rather overwhelm the new arrival in Tokyo or Yokohama, of course; rather it is a somewhat stunned surprise that the great enterprise of the occupation part of his life for some time, seems to excite little interest among Americans. High prices, the baseball season, almost any news from Europe, push eastern Asia onto the back pages of newspapers; they appeared to the writer last summer to exclude this area of immediate American interest

from people's minds as well. It must be added that this observation is even more valid in Europe, inevitably preoccupied as peoples and Governments are with immediate problems of daily living, even survival.

Little is accomplished by asking why this situation exists. Does not even brief contemplation of the global "cold war" lead to the inevitable conclusion that there is the most urgent need, in America at least, for greater, more profound understanding of our interests in east Asia and in Japan in particular? There certainly is at least the danger that our preoccupation with European problems, and "aggressive expansionism" in that region, may blind us to the importance of other areas of the world, and to the fact that the "expansionism," whether aggressive in a physical sense or ideological, is world-wide.

Understanding of Japan, it may be suggested, is urgently demanded in at least three different senses. What are the basic objectives of the United States in Japan and the adjacent mainlands of China and Korea? What do we want and what do we need in the area? Secondly—to quite as important a degree as during the war—we need a more informed attempt to understand the Japanese character and psychology; the legend of the "inscrutable Japanese" may some day prove to be spurious. Finally, there is an even more urgent necessity: information which may lead to understanding of the set-up, operations, and real achievements in Japan under General MacArthur.

The two volumes under consideration are both praiseworthy attempts to provide some aspects of all this understanding. *The Chrysanthemum and the Sword* developed from the indubitably valuable work performed by Miss Benedict, the well-known anthropologist, for the Office of War Information during the war. It is a generally readable distillation of sound scholarship and painstaking research. *Star-Spangled Mikado* is as different a book as can be imagined. Messrs. Kelley and Ryan are able professional journalists who both served in Tokyo, for New York and London papers, during the first and often trying period of the occupation in 1945-46.

The first necessity which might lead to better understanding—appreciation of American aims in Japan and eastern Asia, realization of our stake—is not adequately treated in either book. Bases of policy which are accepted as fundamental by occupation authorities, such as Japan's probable future significance to our global strategy, are glossed over or omitted. The geographical significance of Japan's position *vis-a-vis* Communist-threatened China and Korea is not analyzed. There is but brief discussion of the present and future economic problems of Japan, or of the similarity which their significance to America bears to the problems of Germany. One must look elsewhere, to earlier books and to easily-available official reports on the occupation, for suggestive discussion of all these basic questions.

Miss Benedict's book, however, deserves most careful reading and fre-

quent reference by anyone who would achieve some ability to interpret the Japanese mind and character. Mythology, legend, literature, and the theater, as well as such standard anthropological subject matter as family life and *mores*, are all drawn upon in search of the roots of and clues to the baffling behavior of the Japanese both as an individual and *en masse*.

Quite apart from the mass of background material which the author's research has yielded, there are several highly pertinent suggestions bearing on some very deeply important questions of today. It is impossible not to be puzzled by the eagerness with which, it seems, most Japanese are trying to adopt the ways of their conquerors; no one who has travelled throughout the country can avoid being impressed by the friendly spirit everywhere encountered, by the utter lack of hostility. (A trip to Korea is one of the best ways of emphasizing by contrast the strange friendship of the former enemy, the cold enmity of those we came to "liberate.")

But are we being duped? Are they not cleverly biding their time, soothing the gullible American with ready smiles, total acquiescence to his every wish, flattery, charming hospitality? And how profound can the changes on the surface be when they have come so quickly? Miss Benedict has highly interesting answers to these queries which bedevil the traveller returned from Japan. She notes that the Westerner tends to regard these shifts "in what he regards as principles" with suspicion. But, she writes, such shifts are" . . . an integral part of the conduct of life in Japan, whether in personal or international relations. The Japanese sees that he has made an 'error' in embarking on a course of action which does not achieve its goal. When it fails he discards it as a lost cause, for he is not conditioned to pursue lost causes. 'It is no use,' he says, 'biting one's own navel.' . . ." Much of the bulk of the book is devoted to providing impressive documentation of this summary statement. There is little room left, when she finishes, for the accusation that she is merely theorizing or falling prey to wishful thinking. This book should not only be widely read, but re-read, thought about, discussed. The War Department would do well to provide it for all officers and civilians charged with direct relations with the one-time enemy.

As should be expected both from the title and the identity of the authors, *Star-Spangled Mikado* is highly readable, breezy, and often informing reporting on conditions of the occupation. Something of the rather electric, usually hectic, atmosphere of Tokyo is conveyed. There is little discussion, save in the final provocative chapter, of objectives of the occupation; there is perhaps too much discussion of personalities who, with the exception of General MacArthur, can be but quickly-to-be-forgotten names to the majority of readers who have not been in Japan since the war. A disparate amount of space is devoted to a detailing of the rather private "war" between Tokyo-stationed journalists and over-strict and pompous censorship exercised by "public relations officers." It would surely have been

more valuable, and easily possible, to include chapters outlining the policies and operations of the main sections of MacArthur's General Headquarters than to take the reader over the all-too-familiar ground of the G.I. relieving his sexual urges with the natives.

In the final chapter the authors present their answers to the question "What shall we do with Japan?" The rushing events of the past few months already give their answers a hollow tone. Japan, they say, should, after a general peace conference of all interested Governments, become a "ward of the United Nations." Yet "by no means should we get out of Japan for at least a generation." Who do they mean by "we"? It is a too-well-known fact that the American Government several months ago proposed just such a conference as the authors suggest. They bluntly criticize the "military thinking" which leads many to consider Japan as America's future outpost in eastern Asia. Both their recommendations and criticisms seem unfounded, both in the light of recent events and trends which were clear enough to officials in General Headquarters, Tokyo, long ago.

These two books are, then, partial answers, of varying quality, to the urgent need for more literature on Japan and on America in Japan. Perhaps one can hope that they will stimulate others to attempt to fill the too-numerous gaps.

WILLIAM G. FLETCHER

Utrecht, Holland

Germany's Underground. By Allen Welsh Dulles. New York: Macmillan; 1947. Pp. xiii, 207. \$3.00.

They Almost Killed Hitler. Based on the personal account of Fabian von Schlabrendorff. Prepared and edited by Gero v. S. Gaevernitz. With an Introduction by Major General William J. Donovan. New York: Macmillan; 1947. Pp. x, 150. \$2.50.

These two books deal with a significant, perhaps the most important, segment of the German underground, about which pitifully little is known. Starting in 1938 a heterogeneous but growing group of high-ranking civil servants, army officers, professional men, Protestant and Catholic churchmen, labor leaders, and Rightists conspired against the Nazi regime which they feared was leading Germany into war and destruction. A series of plots culminated in the attempt of July 20, 1944, against Hitler's life, which failed and brought death to scores of Germany's outstanding men and thousands of lesser prominence on the scaffold, the gallows, and the execution grounds—usually after indescribable tortures. The failure of the plot deprived post-war Germany of much of the leadership it needs so badly today in the task of constructing a new Germany, at once more democratic and peaceful. For these men were able, young or relatively

young, unbroken in spirit, and they had shown in practice that they were willing to coöperate on a basis of political compromise, something which is so difficult for Germans to accomplish. Some of them, undoubtedly, were opportunistic but very many were brave men, including what Mr. Dulles calls "some of the best of Germany's young generation" (p. 84). Their spiritual and political ideology was provided by the so-called Kreisau Circle, led by Count Helmuth von Moltke. This group was opposed to "the totalitarian claim of the state on the individual which forces him to renounce his moral and religious obligations to God" as stated to the notorious People's Court by the youngest and most forthright of the conspirators, Peter Yorck von Wartenburg, bearer of one of Prussia's most famous historical names (pp. 82, 84). The political beliefs of this group involved a compromise between the Right and Left. These conspirators "did not feel that Germany was ready for a thoroughgoing democracy" (p. 95). But few, if any, observers of the German situation would disagree with that conclusion. After all, the results of thoroughgoing democracy, imposed by the Weimar Constitution upon a people not ready for so much power over themselves, had not been such as to invite a second experiment of the same kind upon the same patient.

Mr. Allen W. Dulles, already well known as an international lawyer and diplomat, had been in charge of OSS in Switzerland for some twenty months before that fatal day in July, 1944. His job was to find out what was going on inside Germany, including the extent and true character of the real opposition to Hitler. After V-E Day he became head of the OSS mission to Germany where access to captured files of the Gestapo, the stenographic records of the trials of the conspirators, and other sources helped him unravel the entire plot and report on it. In his book he tells the story of the Germans who had worked secretly for years, each daily risking his life—and losing it finally—in order that Germany might be saved from the Nazi regime. They faced the same murderous cruelty of the Gestapo as the Resistance in France and other occupied countries. But, as the author points out, they had the enormous disadvantage of fighting their compatriots, rather than a foreign invader, a national enemy (pp. 21-22). They received no encouragement from the West, no promise of better peace terms (p. 146). Instead, they were handicapped by the demand for "unconditional surrender" which enabled the Goebbelses and Bormanns "to prolong a totally hopeless war for many months" (p. 133), coupled with the British and American wholesale bombing of German cities which seemed to stiffen German morale rather than weaken it. Under such conditions "Instead of gaining recruits, the anti-Nazis lost them" (p. 169). Mr. Dulles concludes that "for the future of Germany there is some hope because Germans from within the Reich made the attempt to rid the world of Hitler" (p. 198).

The book is fascinating—more than fiction could be—and the author's

excellent writing increases the reader's pleasure. The reviewer who has had some part in G-2 interrogations of top level Nazi prisoners and who counted among his friends one of the important conspirators named in the book, finds previously known facts, published or unpublished, stated correctly and the rest fitting into the picture without any apparent contradiction. One possible objection might be raised to the wording of the statement that the German "churches were slow to realize that Nazism was not merely a 'political change' but an attack on basic Christian principles" (p. 110). The Catholic bishops had denounced Nazism as incompatible with Christianity as early as 1930 (in Austria) and 1932 (in Germany). But the Vatican, unfortunately and almost unbelievably, allowed itself to be fooled by the foxy Franz von Papen, reputedly a devout Catholic, about the fundamental nature of the regime with which it concluded the Concordat. One might also add that Carl Mierendorf was more important as editor of the *Sozialistische Monatshefte* than of the daily paper mentioned (p. 103). But these are minor flaws which by no means detract from the great value of Mr. Dulles' revelations.

Gero v. S. Gaevernitz, son of an illustrious German professor, an American citizen and long-time resident of the United States, and Mr. Dulles' chief OOS adviser on German matters, is the editor of the second book on the same phase of the German underground. It tells the story as experienced by a young German lawyer in uniform, Fabian von Schlabrendorff, who prepared a bombing attack on Hitler and miraculously lived to tell about it. An introduction by William J. Donovan, head of OSS, leads up to the report of the German conspirator. Since it is based primarily on the experiences of one individual, as the editor points out (p. viii), it does not furnish a complete story of the resistance movement in Germany, but it does put it in personal terms and provides a graphic background as seen and described ably by an active and long-time participant in the conspiracy. It therefore adds valuable and more detailed material to the generally more complete story of Mr. Dulles. It is regretted that the lack of an index makes desirable cross-references to the other book rather difficult.

JOHN BROWN MASON

Oberlin College

Our Vichy Gamble. By William L. Langer. New York: Alfred A. Knopf; 1947. Pp. ix, 412. Appendix. Index. \$3.75.

Professor Langer, by making available this fascinating account of our policy towards the Vichy Government from its inception in 1940 to Admiral Darlan's assassination in 1942, has undoubtedly made an important contribution to the historiography of the Second World War. His deft and scholarly retracing of the events that led to the collapse of the Third Republic and to the second armistice of Compiègne might easily be considered

the definitive narrative of the circumstances under which France faltered. In the subsequent chapters what Churchill once called "the sad and sorry and squalid tale of what is going on at Vichy" is presented with a wealth of detail that furnishes invaluable insight into the political, psychological, and moral climate of modern authoritarianism. Much light is also shed on the methods of policy formation employed by President Roosevelt and the State Department, on inter-agency bickering in war-time Washington, and on the views of our representatives abroad.

For his examination of the course of our relations with France Professor Langer had the almost unrestricted use of the files of both the State Department and the Office of Strategic Services. And while this very fact makes for the unusual interest of the book, it also gives it a very special character.

Normally, when official archives of hitherto classified documents are opened, all interested scholars gain access to them and are able to present the results of their research and their conclusions according to their temperament and their particular interest in certain aspects of the subject matter. Here only one historian, immensely qualified, was selected by the Government to present what on almost every page is a frank apologia for the State Department's policy towards the French problem. Both the British and other American agencies are vehemently attacked for their attempts at hampering this policy; where Professor Langer deals, time and again, with the objections of American "liberals and radicals" to the official policy, he reveals talents of a political pamphleteer.

As regards that policy a statement which the author makes with respect to the American recognition of Darlan in 1942 might well be used to characterize our entire "Vichy gamble": "It was an awkward business and one that would require a good deal of explaining" (p. 364). Professor Langer has done an immense amount of explaining. Yet he has not given convincing proof that this country gained any appreciable advantages from appeasing Vichy, putting successively faith in such figures as Weygand, Giraud, and Darlan, and thereby scorning the French resistance movement from which the Fourth Republic was to be born. But if our policy did not substantially further our national interests, was it worth playing what was, again in the author's own words, "certainly and uninspiring prelude to the great crusade for freedom" (p. 376)?

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NOTES

Cases on International Law. By Pitt Cobbett. London: Sweet and Maxwell; 1947 (Sixth Edition, edited by Wyndham Leigh Walker). Pp. xx, 416. Appendix. Index. Although this volume is larger than the fifth edition (1931)¹ it maintains the plan of former editions, namely,

¹ Reviewed in this JOURNAL, Volume 31 (1937), p. 752.

abstracts of principal cases with appended comments and notes. The comments discuss the principal decision together with related cases and the notes discuss in text-book fashion the sub-topics pointed up by the principal cases, in connection with the relevant judicial and diplomatic precedents and the views of text writers. The abstracts of principal cases comprise 47 decisions of British courts including 1 Canadian decision, 11 decisions of American courts, and 6 of the World Court including 1 advisory opinion, 8 arbitration cases, 13 diplomatic controversies, 1 report of a Commission of Inquiry and 1 opinion of the Attorney General. The British decisions and the arbitration cases are increased by about 50 percent and the World Court cases are doubled. Nevertheless it is by no means disparaging to say that the enlarged comments and notes place the work rather on the text-book side.

The new edition has brought the work up to date in the light of the decisions and events of the 16 years intervening since the last edition. Practically the same headings and sub-headings have been preserved in both editions. The appendix consists of a note on International Organizations, the League of Nations, and the United Nations."

Like the original author, the editor has not strayed into theoretical discussions of mooted questions, but has maintained the attitude of the positivist scholar. The work therefore continues the authoritative standard established by Mr. Cobbett. The highest tribute the reviewer can pay is to say that in 30 years of official and private practice he has found this work of unfailing value for ready reference.

L. H. WOOLSEY

O Asilo Interno em Direito Internacional Publico. By Hugo Cabral de Moncada. Coimbra: 1946. Pp. 162. This is a careful study of the problem of asylum in international law, with special stress upon the practice of asylum during the Spanish Civil War, 1936-1939. The opening chapters recite the history of the practice of asylum from the sixteenth to the twentieth centuries and show the differences between the attitude toward asylum in European and in Latin American countries both in respect to practice and in respect to doctrine. The experience of the Spanish civil war made it clear that the condemnation of the practice of asylum by European jurists must be subjected to revision upon humanitarian grounds. The more recent and, in the opinion of the author, the more correct tendency is to base the right of asylum not upon the principle of diplomatic privileges and immunities of foreign warships but upon the principle of the fundamental rights of man as man, in accordance with which the refugee is entitled to humane treatment whatever his offense.

C. G. F.

Principles, Tasks and Problems of the Red Cross in International Law. By Max Huber. Geneva: International Committee of the Red Cross; 1946. Pp. 53.

Principes D'Action et Fondements de L'Oeuvre du Comité International de la Croix-Rouge. By Max Huber. Geneva: Comité International de la Croix-Rouge; 1947. Pp. 40. As their titles suggest, these two pamphlets by the distinguished Swiss jurist and humanitarian survey the basic principles upon which the organization of the Red Cross conducts its work and examine the concrete problems with which it is confronted.

An analysis is given of the Geneva Convention of 1864 and of subsequent conventions, followed by a description of the various subsidiary agencies which assist relief of the sick and wounded in time of war. Further details are available to the student in the same author's *The Red Cross: Principles and Problems*, Geneva, 1942.

C. G. F.

Cours de Droit International Privé. By J. P. Niboyet. Paris: Sirey; 1947. Pp. 713. This work brings us, in the form of a series of lectures rather than a treatise, a valuable survey of the field of international private law, prepared by a professor of world-wide reputation. Almost half of the volume is given over to the subjects of nationality and the status of aliens, which, in less exhaustive form, are treated in English and American volumes on public international law. With Book III begins an analysis of the "conflict of laws, authorities, and jurisdictions," including a minute examination of the French Civil Code and subsequent developments. French procedure is presented in detail, and the author then proceeds to practical applications of the French rule, chiefly in the matter of marriage and contracts. The closing sections on the conflict of authorities and jurisdictions raise many questions indirectly related to public international law, notably the determination of the effects of foreign judgments.

C. G. F.

La Théologie de la Guerre Juste. By Mgr. de Solages. Toulouse: Desclée de Brouwer; 1946. This slender booklet, reviewing questions already treated more in detail by Regout and others, is chiefly of interest for bringing into prominence a remarkable Italian theologian of the middle nineteenth century, Taparelli d'Azelio, who, in his treatise on the *Natural Law*, laid down in clear terms the basis of the society of nations, who anticipated by three-quarters of a century the conception of collective security later embodied in the Covenant of the League of Nations, and whose ideas are believed to have greatly influenced the encyclicals of Benedict XV, Pius XI, and Pius XII, as well as the writings of Don Luigi Sturzo.

C. G. F.

The Covenant and the Charter. By J. L. Brierly. Cambridge: the University Press; 1947. Pp. 28. \$.50. This slender pamphlet is characterized by the same penetrating judgment shown by the author in his other, as the reviewer would add, all-too-brief contributions to the development of international law. The framers of the Charter decided to exchange the "coöperative basis" of the Covenant, which imposed obligations upon the members of the League individually, for an organic institution; following in that respect "a right instinct" if the new association was to be a stronger one. But in doing so they introduced into the decisions of the Security Council an element which makes it impossible for that body to act except by unanimous consent of the five permanent members. "Under the Covenant the League might be unable to act as a League, but at least the members of the League could act together if the occasion demanded joint action. The members of the United Nations cannot even do that; a Great Power can forbid it."

C. G. F.

The Problem of Germany. By Hoyt Price and Carl E. Schorske. New York: Council on Foreign Relations; 1947. Pp. xxv, 161. \$2.00. With the downfall of the Nazi regime in Germany the flood of the books exploring the various ramifications of the "German problem" has been radically reduced to a mere trickle. Out of that trickle the present little study is the best available analysis of the indigenous development since the defeat of Germany. It analyzes the reemergence of social conflict, its extension into political party strife, and its reflection in religious and intellectual life. How each of the Allies, wittingly or unwittingly, has cultivated political dissension in the process of strengthening its own position among the Germans is also ably told here.

JOSEPH S. ROUCEK

Hofstra College

The European Cockpit. By William Henry Chamberlin. New York: Macmillan; 1947. Pp. 330. Index. \$4.00. The post-war world, particularly its European segment, continues to offer tempting opportunities for descriptive, analytical, critical, and constructive writing. Its problems are of unusual complexity. One would welcome a fresh approach to the East-West conflict. There is nothing of the kind in this latest of Mr. Chamberlin's works. It is for the major part a well informed and well written travelogue. As such it covers Great Britain, Germany, France, Italy, Austria, Switzerland, and Belgium. There are also some chapters on countries which the author did not include in his four months' trip to Europe in 1946, notably on those which lie East of the well-worn Iron Curtain. The review of the Polish situation is probably the most impressive part of the book, which would seem to show how much can be accomplished without a cursory visit. The writer's impressions are analyzed and policy proposals outlined in the concluding chapters.

Mr. Chamberlin firmly believes in liberalism and individualism. The absence of both in the Soviet Union has been noted before but no constructive line of thought is offered as to how the Union could be won over to our ideals. Take for instance the much discussed use of slave or forced labor in the Soviet Union. Mr. Chamberlin hopes that in a not too distant future "the representative of some freedom-loving country will rise in the General Assembly of the United Nations . . . and propose a resolution outlawing any and all forms of involuntary servitude, forced labor, and slavery every where in the world, regardless of pretext or excuse." The author is careful enough to suggest that the prohibition of such labor should be enforced by a mixed commission and that if nothing more were accomplished at least the Soviet Union would "very definitely" be placed on the "moral defensive." The crucial question of how the mixed commission could make investigations and enforce the prohibition in Russia is left open. Putting the Soviet Union on the moral defensive would no doubt offer a measure of satisfaction to many people. Whether it would make the lot of forced labor any easier is another question which the author does not attempt to answer. Efforts to deal with forced labor through the League of Nations Slavery Convention and numerous International Labor Conventions would seem to offer an interesting field of study.

The establishment of a federation is the only solution which Mr. Chamberlin conceives for the European countries West of the Iron Curtain. This is no new proposal. Nor is it a novel idea to invite the United States to use its influence with a view to bringing about such a limited European

federation. Partly as a result of the so-called Marshall Plan, the possibilities of such a solution are being explored by some of the European countries, notably by France. Such efforts will be watched with sympathy but the difficulties involved—and these difficulties are not discussed—are formidable. The author ends where he might well have started. In spite of Mr. Chamberlin's failure to tackle successfully ultimate questions of the European Cockpit, his book is worth reading. We forget so easily. Here is an informative summary and interpretation of the events which led from Yalta and Potsdam to the present impasse.

LEO GROSS

Fletcher School of Law and Diplomacy

Política Internacional de Chile. Exposición del Señor Ministro de Relaciones Exteriores, Don Raul Juliet Gomez, ante el Senado de la Republica. Santiago: Ministerio de Relaciones Exteriores; 1947. Pp. 61. Map. This official statement by the Chilean Foreign Minister at a Special Session of the Chilean Senate on January 21, 1947, merits notice here because of its interesting review of three problems: Chilean claims to the Antarctic; the Spanish problem; and the problem of the veto in the United Nations Security Council. The discussion of the Antarctic claims includes the text of the Chilean decree of November 6, 1940, defining the boundaries of Chilean territory in the Antarctic; a map of the area is added. The historical, geographical, juridical, diplomatic, and administrative antecedents are traced in some detail. Recent and projected Antarctic expeditions of various countries are described. The Monroe Doctrine is invoked as excluding claims of non-American states.

The Spanish problem is discussed in the light of the United Nations stand against the Franco government. This activity is described as not involving intervention in domestic affairs but as an exercise of the right of the organized international community to take steps for guarantying peace. Chile has coöperated loyally with the United Nations in this matter.

In discussing the veto question the Foreign Minister was replying to charges that acquiescence in this provision of the Charter was contrary to international law and to the interests of Chile. He traces the history of the veto from the San Francisco Conference through the later discussion in the United Nations and in non-official commentaries. He asserts that Chile accepts the rule requiring unanimity among the Great Powers not as a perfect system but as a necessity in this transitional period.

PHILIP C. JESSUP

Of the Board of Editors

The Study of International Relations in American Colleges and Universities. By Grayson Kirk. New York: Council on Foreign Relations; 1947. Pp. 113. "University administrators and teachers, in fact everyone responsible for organizing instruction and planning research in this new and rapidly expanding field, will profit from reading Professor Kirk's thoughtful and comprehensive survey." To this statement from the book's jacket this reviewer heartily subscribes. Here we find a summary and synthesis of the discussions at six regional conferences of college teachers of international relations and, in addition, most fortunately, the individual views of the author, the fruit of wide experience in teaching, research, and writing in the field.

The subject of international relations is compounded of many disciplines, a fact that makes teaching in this field, and the training of teachers, extremely difficult. These difficulties are analysed with much penetration and common sense, and various solutions offered. Programs of teaching at the undergraduate level, for the M.A., and for the Doctorate are suggested. Also post-doctoral training is discussed, particularly the relative value of joint seminars and discussion groups, in-service training, and foreign travel. And the needs, facilities, and conduct of research are explored and the respective roles of group and individual research assessed. There is besides an invaluable chapter on the opportunities for a career in international relations, furnishing an authoritative answer to the usual questions asked by ambitious students planning a career in this field.

Three general suggestions on graduate teaching will undoubtedly give rise to debate: (1) the proposal to extend the graduate program from three years to four; (2) choice of French as the indispensable language, with Russian as second choice; (3) the advantages of setting up a separate department in international relations.

Readers of this JOURNAL will of course be most interested in the author's views on the proper place of international law in a program of international studies. As far as the graduate program is concerned Professor Kirk has no doubts on this subject; international law is prescribed as a requirement for all programs of study. His views concerning its place in the undergraduate program, however, are not the same. In some circumstances, he believes, international law must be dropped in favor of diplomatic history, and at all events this subject is less important than international politics or international organization. It would seem, however, that this view is related to the way in which international law is usually presented to undergraduates, for the author writes (p. 39): "But if taught by the case method in the conventional way, the subject is of more importance to the graduate student than to the undergraduate." If taught frankly and specifically as an aid to the understanding of international politics, this objective determining both the choice of material and the method of presentation, the course in international law, even at the undergraduate level, should in the reviewer's opinion gain recognition as a necessary part of a program in international relations.

JOHN B. WHITTON

Of the Board of Editors

The Social Effects of Aviation. By William Fielding Ogburn. Boston: Houghton Mifflin; 1946. Pp. vi, 755. Bibliography. Index. \$5.00. Charles and Mary Beard, in their able historical analysis of the United States during the nineteen-thirties, *America in Midpassage*, criticized sociologists of the period for ignoring "historical perspective and the issues of prognosis."¹ William Fielding Ogburn of the University of Chicago, long one of America's most distinguished sociologists, picks up with some misgivings in *The Social Effects of Aviation* the gauntlet flung down by the Beards.

Although Professor Ogburn covers his subject with thoroughness, particularly in breadth, from "Accidents in aviation: effect on death rate" to "Youth: effect of private aircraft on," readers of the JOURNAL will

¹ Charles and Mary Beard, *America in Midpassage*, 1939, Vol. II, pp. 898-899.

probably be most interested in the final two chapters of the book dealing with "International Relations" and "International Policies." They are likely to note, as did the book's author, the conspicuous omission of the effect of aviation on the future of war, but they will probably agree with Professor Ogburn that "There is so much secrecy in this field, and the technological changes are so rapid and revolutionary, that the author could not make a satisfactory study."

With regard to the effect of aviation upon future international relations, it is pointed out that, other factors remaining equal, aviation may speed the evolution of states of larger size and might even facilitate a single political organization of the peoples of the world. While accepting this final possibility, Professor Ogburn displays admirable caution when he calls attention to the fact that to endure states need a social coherence as well as a political structure. As he says, "Empires and very large states have been formed before, to be broken up later," because "the size of political units has evolved faster than their solidarity." He does feel, however, that aviation in the long run will tend to produce a stronger unity.

Professor Ogburn believes that in states which have expanded politically in size so far that their cohesiveness is weak the effect of aviation is more likely to be a development of nationalism rather than internationalism. He foresees, nonetheless, a trend toward large regional organizations, based on the need of big powers for providing a zone of security around themselves for defense, for speed of offense, and for air bases and on the need of the near-by small states for protection in the present warlike world.

While Professor Ogburn says there are those who believe that aviation, through an air police force under the United Nations, might break up regional trends and further world organization, he points out with more realism that in any world organization of the near future there will be strong local or regional interests and power systems centered around great nations. In other words the Great Powers will determine the size of their own air forces and will make impossible direction of the world police force against themselves.

One of the few statements in Professor Ogburn's book to which one might take some exception, primarily on the basis of exactness of expression, is that the "large states, Russia and the United States and the British Empire, come out of World War II as the Great Powers." Russian area studies men would have preferred the term Soviet Union, British scholars, the term British Commonwealth of Nations, while students of power politics might quarrel with the inclusion of the British Commonwealth on terms of equality with the "super-powers." Arnold Toynbee certainly deprecates the possibility of the British Commonwealth playing the role of the world's third Great Power in his recent article on "The International Outlook" in *International Affairs*.²

ROBERT E. ELDER

Colgate University

² Arnold Toynbee, "The International Outlook," in *International Affairs*, 1947, pp. 465, 470-471.

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UNITED NATIONS
GENERAL ASSEMBLY

PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION:
REPORT OF THE COMMITTEE ON THE PROGRESSIVE DEVELOPMENT OF
INTERNATIONAL LAW AND ITS CODIFICATION;
REPORT OF THE SIXTH COMMITTEE *

1. The General Assembly, at its ninety-first meeting, on 23 September 1947, referred to the Sixth Committee the report of the Committee on the Progressive Development of International Law and its Codification (document A/331).

The Sixth Committee, after a general discussion, referred that report to its Sub-Committee 2. After having examined the proposals of its Sub-Committee 2, the Sixth Committee approved the draft resolution and the annexed Statute relating to the International Law Commission which it now recommends to the General Assembly for adoption.

ESTABLISHMENT OF THE INTERNATIONAL LAW COMMISSION

THE GENERAL ASSEMBLY,

RECOGNIZING the need for giving effect to Article 13, paragraph 1, sub-paragraph a, of the Charter, stipulating that the General Assembly shall initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification;

HAVING STUDIED the report of the Committee directed by resolution 94 (I) of the General Assembly of 11 December 1946 to study:

(a) The methods by which the General Assembly should encourage the progressive development of international law and its eventual codification;

(b) Methods of securing the co-operation of the several organs of the United Nations to this end;

(c) Methods of enlisting the assistance of such national or international bodies as might aid in the attainment of this objective;

RECOGNIZING the desirability of establishing a commission composed of persons of recognized competence in international law and representing as a whole the chief forms of civilization and the basic legal systems of the world;

RESOLVES to establish an "International Law Commission," the members of which shall be elected at the third regular session of the General Assembly, and which shall be constituted and shall exercise its functions in accordance with the provisions of the annexed statute.

* Document A/504, 20 November 1947. Rapporteur: Mr. G. Kaeckenbeeck (Belgium). This report was approved by the General Assembly on 21 November 1947. Texts by courtesy of Dr. Liang; see article, above, p. 66. See also this JOURNAL, Vol. 41 (1947), Supplement, p. 29.

STATUTE OF THE INTERNATIONAL LAW COMMISSION

Article 1

1. The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification.
2. The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law.

CHAPTER I. ORGANIZATION OF THE INTERNATIONAL LAW COMMISSION

Article 2

1. The Commission shall consist of fifteen members who shall be persons of recognized competence in international law.
2. No two members of the Commission shall be nationals of the same State.
3. In case of dual nationality a candidate shall be deemed to be a national of the State in which he ordinarily exercises civil and political rights.

Article 3

The members of the Commission shall be elected by the General Assembly from a list of candidates nominated by the Governments of Members of the United Nations.

Article 4

Each Member may nominate for election not more than four candidates, of whom two may be nationals of the nominating State and two nationals of other States.

Article 5

The names of the candidates shall be submitted in writing by the Governments to the Secretary-General by the first of June of the year in which an election is held, provided that a Government may in exceptional circumstances substitute for a candidate whom it has nominated before the first of June another candidate whom it shall name not later than thirty days before the opening of the General Assembly.

Article 6

The Secretary-General shall as soon as possible communicate to the Governments of Members the names submitted, as well as any statements of qualifications of candidates that may have been submitted by the nominating Governments.

Article 7

The Secretary-General shall prepare the list referred to in Article 3 above, comprising in alphabetical order the names of all the candidates duly nominated, and shall submit this list to the General Assembly for the purposes of the election.

Article 8

At the election the electors shall bear in mind that the persons to be elected to the Commission should individually possess the qualifications required and that in the Commission as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 9

1. The fifteen candidates who obtained the greatest number of votes and not less than a majority of the votes of the Members present and voting shall be elected.
2. In the event of more than one national of the same State obtaining a sufficient number of votes for election the one who obtains the greatest number of votes shall be elected and if the votes are equally divided the elder or eldest candidate shall be elected.

Article 10

The members of the Commission shall be elected for three years. They shall be eligible for re-election.

Article 11

In the case of a casual vacancy, the Commission itself shall fill the vacancy having due regard to the provisions contained in articles 2 and 8 of this Statute.

Article 12

The Commission shall sit at the headquarters of the United Nations. The Commission shall, however, have the right to hold meetings at other places after consultation with the Secretary-General.

Article 13

Members of the Commission shall be paid travel expenses and shall also receive a per diem allowance at the same rate as the allowance paid to members of commissions of experts of the Economic and Social Council.

Article 14

The Secretary-General shall, so far as he is able, make available staff and facilities required by the Commission to fulfil its task.

CHAPTER II. FUNCTIONS OF THE INTERNATIONAL LAW COMMISSION

Article 15

In the following articles the expression "progressive development of international law" is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression "codification of international law" is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive state practice, precedent and doctrine.

*A. Progressive development of international law**Article 16*

When the General Assembly refers to the Commission a proposal for the progressive development of international law, the Commission shall follow a procedure on the following lines:

- (a) The Commission shall appoint one of its members to be Rapporteur;
- (b) The Commission shall formulate a plan of work;
- (c) The Commission shall circulate a questionnaire to the Governments, and shall invite them to supply within a fixed period of time data and information relevant to items included in the plan of work;
- (d) The Commission may appoint some of its members to work with the Rapporteur on the preparation of drafts pending receipt of replies to this questionnaire;
- (e) The Commission may consult with scientific institutions and individual experts; these experts need not necessarily be nationals of Members of the United Nations. The Secretary-General will provide, when necessary and within the limits of the budget, for the expenses of of these consultations of experts;
- (f) The Commission shall consider the drafts proposed by the Rapporteur;
- (g) When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to this document which shall be accompanied by such explanations and supporting material as the Commission considers appropriate. The publication shall include

any information supplied to the Commission in reply to the questionnaire referred to in sub-paragraph (c) above;

(h) The Commission shall invite the Governments to submit their comments on this document within a reasonable time;

(i) The Rapporteur and the members appointed for that purpose shall reconsider the draft taking into consideration these comments and shall prepare a final draft and explanatory report which they shall submit for consideration and adoption by the Commission;

(j) The Commission shall submit the draft so adopted with its recommendations through the Secretary-General to the General Assembly.

Article 17

1. The Commission shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by inter-governmental agreement to encourage the progressive development of international law and its codification, and transmitted to it by the Secretary-General.

2. If in such cases the Commission deems it appropriate to proceed with the study of such proposals or drafts, it shall follow a procedure on the following lines:

(a) The Commission shall formulate a plan of work, and study such proposals or drafts and compare them with any other proposals and drafts on the same subject;

(b) The Commission shall circulate a questionnaire to all Members of the United Nations and to the organs, specialized agencies and official bodies mentioned above which are concerned with the question, and shall invite them to transmit their comments within a reasonable time;

(c) The Commission shall submit a report with its recommendations to the General Assembly. It may also, if it deems it desirable, before doing so make an interim report to the organ, agency or body which has submitted the proposal or draft;

(d) If the General Assembly should invite the Commission to proceed with its work on a proposal, the procedure outlined in Article 16 above shall apply. The questionnaire referred to in paragraph (c) of that article may not, however, be necessary.

B. Codification of international law

Article 18

1. The Commission shall survey the whole field of international law with a view to selecting topics for codification, having in mind existing drafts whether governmental or not.

2. When the Commission considers that the codification of a particular topic is necessary or desirable, it shall submit its recommendations to the General Assembly.
3. The Commission shall give priority to requests of the General Assembly to deal with any question.

Article 19

1. The Commission shall adopt a plan of work appropriate to each case.
2. The Commission shall, through the Secretary-General, address to Governments a detailed request to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to the topic being studied and which the Commission deems necessary.

Article 20

The Commission shall prepare its drafts in the form of articles and shall submit them to the General Assembly together with a commentary containing:

- (a) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine;
- (b) Conclusions relevant to:
 1. The extent of agreement on each point in the practice of States and in doctrine;
 2. Divergencies and disagreements which exist, as well as arguments invoked in favor of one or another solution.

Article 21

1. When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to the document including such explanations and supporting material as the Commission may consider appropriate. The publication shall include any information supplied to the Commission by Governments in accordance with Article 19. The Commission shall decide whether the opinions of any scientific institution or individual expert consulted by the Commission shall be included in the publication.
2. The Commission shall request Governments to submit comments on this document within a reasonable time.

Article 22

Taking such comments into consideration, the Commission shall prepare a final draft and explanatory report which it shall submit with its recommendations through the Secretary-General to the General Assembly.

Article 23

1. The Commission may recommend to the General Assembly:
 - (a) To take no action, the report having already been published;
 - (b) To take note of or adopt the report by resolution;
 - (c) To recommend the draft to Members with a view to the conclusion of a convention;
 - (d) To convoke a conference to conclude a convention.
2. Whenever it deems it desirable, the General Assembly may refer drafts back to the Commission for reconsideration or redrafting.

Article 24

The Commission shall consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning State practice and of the decisions of national and international courts on questions of international law, and shall make a report to the General Assembly on this matter.

CHAPTER III. COÖPERATION WITH OTHER BODIES

Article 25

1. The Commission may consult, if it considers necessary, with any of the organs of the United Nations on any subject which is within the competence of that organ.
2. All documents of the Commission which are circulated to Governments by the Secretary-General shall also be circulated to such organs of the United Nations as are concerned. Such organs may furnish any information or make any suggestions to the Commission.

Article 26

1. The Commission may consult with any international or national organizations, official or non-official, on any subject entrusted to it if it believes that such a procedure might aid it in the performance of its functions.
2. For the purpose of distribution of documents of the Commission, the Secretary-General, after consultation with the Commission, shall draw up a list of national and international organizations concerned with questions of international law. The Secretary-General shall endeavor to include on this list at least one national organization of each Member of the United Nations.
3. In the application of the provisions of this article, the Commission and the Secretary-General shall comply with the resolutions of the General Assembly and the other principal organs of the United Nations concerning

relations with Franco Spain and shall exclude both from consultations and from the list, organizations which have collaborated with the nazis and fascists.

4. The advisability of consultation by the Commission with inter-governmental organizations whose task is the codification of international law, such as those of the Pan American Union, is recognized.

**PLANS FOR THE FORMULATION OF THE PRINCIPLES RECOGNIZED IN THE CHARTER
OF THE NURNBERG TRIBUNAL AND IN THE JUDGMENT OF THE TRIBUNAL:
REPORT OF THE COMMITTEE ON THE PROGRESSIVE DEVELOPMENT
OF INTERNATIONAL LAW AND ITS CODIFICATION;
REPORT OF THE SIXTH COMMITTEE ***

At its ninety-first meeting on 23 September 1947, the General Assembly referred to the Sixth Committee the report on plans for the formulation of the principles recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal (document A/332), submitted by the Committee on the Progressive Development of International Law and its Codification.

At its thirty-ninth meeting, on 29 September 1947, the Sixth Committee after a general discussion, referred the report to its Sub-Committee 2, which, under the chairmanship of Mr. LIU CHIEH (China), studied the report at its fifteenth meeting on 30 October 1947.

Although in its resolution 95 (I) of 11 December 1946 the General Assembly attached great importance to the work of formulating, in the context of a general codification of offences against the peace and security of mankind, or of an international criminal code, the principles recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal, several representatives expressed their conviction that this work should be held over until the trials of war criminals were further advanced. The representative of France reserved the position of his delegation on this point.

Having rejected by a majority of nine votes the proposal to refer the matter to an interim organ, the Sub-Committee decided, as had been proposed by the Committee on the Progressive Development of International Law and its Codification, to refer the question to the International Law Commission, the members of which, according to the Sixth Committee's recommendations (Document A/504), will be elected at the next regular session of the General Assembly.

The Committee therefore proposes that the General Assembly should adopt the following resolution:

* Document A/505, 20 November, 1947. Rapporteur Mr. Kaeckenbeeck (Belgium). Adopted 21 November 1947.

FORMULATION OF THE PRINCIPLES RECOGNIZED IN THE CHARTER OF THE
NURNBERG TRIBUNAL AND IN THE JUDGMENT OF THE TRIBUNAL

THE GENERAL ASSEMBLY

DECIDES to entrust the formulation of the principles of international law recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal to the International Law Commission, the members of which will, in accordance with resolution 174(II) of 21 November 1947, be elected at the next session of the General Assembly; and

DIRECTS the Commission to:

(a) Formulate the principles of international law recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal and

(b) Prepare a draft code of offences against the peace and security of mankind, indicating clearly the place to be accorded to the principles mentioned in sub-paragraph (a) above.

DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES PRESENTED BY PANAMA:
REPORT OF THE COMMITTEE ON THE PROGRESSIVE DEVELOPMENT
OF INTERNATIONAL LAW AND ITS CODIFICATION;
REPORT OF THE SIXTH COMMITTEE*

The General Assembly, at its ninety-first meeting held on 23 September 1947, referred to the Sixth Committee a report submitted by the Committee on the Progressive Development of International Law and its Codification concerning the draft declaration on the rights and duties of States presented by Panama (document A/333).

After Sub-Committee 2 had studied the matter, the Sixth Committee considered that the appropriate organ which could be entrusted with the preparation of a draft declaration on the rights and duties of States, was the International Law Commission, but that in view of the desirability of proceeding without further delay, the Secretary-General should be invited to do the necessary preparatory work.

The Sixth Committee therefore recommends to the General Assembly the adoption of the following resolution:

DRAFT DECLARATION ON THE RIGHTS AND DUTIES OF STATES

THE GENERAL ASSEMBLY,

NOTING that very few comments and observations on the draft declaration on the rights and duties of States presented by Panama have been received from the States Members of the United Nations;

REQUESTS the Secretary-General to draw the attention of States to the desirability of submitting their comments and observations without delay;

REQUESTS the Secretary-General to undertake the necessary preparatory work on the draft declaration on the rights and duties of States according to the terms of the resolution included in document A/506;

* Document A/508. Rapporteur Mr. Kaeckenbeeck. Adopted 21 November 1947.

RESOLVES to entrust further study of this problem to the International Law Commission, the members of which, in accordance with the terms of the resolution included in document A/504 will be elected at the next session of the General Assembly;

AND ACCORDINGLY

INSTRUCTS the International Law Commission to prepare a draft declaration on the rights and duties of States, taking as a basis of discussion the draft declaration on the rights and duties of States presented by Panama, and taking into consideration other documents and drafts on this subject.

**PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION:
TEACHING OF INTERNATIONAL LAW; REPORT OF THE SIXTH COMMITTEE ***

On the proposal of the delegation of Bolivia, the Sixth Committee recommends the following resolution for adoption by the General Assembly:

**PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ITS CODIFICATION
TEACHING OF INTERNATIONAL LAW**

CONSIDERING that it is necessary to further the aims of the General Assembly's resolution 94 (I) of 11 December 1946, which initiated the fulfilment of Article 13, paragraph 1, sub-paragraph a of the Charter, regarding the development of international law and its codification; and

CONSIDERING that one of the most effective means of furthering the development of international law consists in promoting public interest in this subject and using the media of education and publicity to familiarize the peoples with the principles and rules that govern international relations; and

CONSIDERING that greater knowledge of and fuller information on the aims, purposes and structure of the United Nations constitute another positive method of assisting the development of international law, of which the United Nations is the main instrument;

THE GENERAL ASSEMBLY RESOLVES to request the Governments of Member States:

(1) To take appropriate measures to extend the teaching of international law in all its phases, including its development and codification, in the universities and higher educational institutions of each country that are under Government control or over which Governments have some influence, or to initiate such teaching where it is not yet provided;

(2) To promote similar teaching regarding the aims, purposes, structure and operation of the United Nations in conjunction with paragraph (1) above and in accordance with the resolution adopted by the General Assembly on 17 November 1947, on the teaching of the purposes and principles, the structure and activities of the United Nations in the schools of Member States;

(3) To give to the Secretary-General the fullest possible coöperation with a view to facilitating the preparatory work on the development of international law and its codification and to support any individual or private effort to these ends undertaken in their countries.

* Document A/509. Adopted 21 November 1947.

UNITED STATES

MILITARY GOVERNMENT, UNITED STATES AREA OF CONTROL, GERMANY;
LAW NO. 59: RESTITUTION OF IDENTIFIABLE PROPERTY *

PART I: GENERAL PROVISIONS

Article 1

Basic Principles

1. It shall be the purpose of this Law to effect to the largest extent possible the speedy restitution of identifiable property (tangible and intangible property and aggregates of tangible and intangible property) to persons who were wrongfully deprived of such property within the period from 30 January 1933 to 8 May 1945 for reasons of race, religion, nationality, ideology or political opposition to National Socialism. For the purpose of this Law deprivation of property for reasons of nationality shall not include measures which under recognized rules of international law are usually permissible against property of nationals of enemy countries.

2. Property shall be restored to its former owner or to his successor in interest in accordance with the provisions of this Law even though the interests of other persons who had no knowledge of the wrongful taking must be subordinated. Provisions of law for the protection of purchasers in good faith, which would defeat restitution, shall be disregarded except where this Law provides otherwise.

PART II: CONFISCATED PROPERTY

Article 2

Acts of Confiscation

1. Property shall be considered confiscated within the provisions of this Law if the person entitled thereto has been deprived of it, or has failed to obtain it despite a well founded legal expectancy of acquisition, as the result of:

- (a) A transaction *contra bonos mores*, threats or duress, or an unlawful taking or any other tort;
- (b) Seizure due to a governmental act or by abuse of such act;
- (c) Seizure as the result of measures taken by the NSDAP, its formations or affiliated organizations;

provided the acts described in (a) to (c) were caused by or constituted measures of persecution for any of the reasons set forth in Article 1.

2. It shall not be permissible to plead that an act was not wrongful or *contra bonos mores* because it conformed with a prevailing ideology con-

* Text by courtesy of Department of State.

cerning discrimination against individuals on account of their race, religion, nationality, ideology or their political opposition to National Socialism.

3. Confiscation by a governmental act within the meaning of paragraph 1 (b) shall be deemed to include, among other acts, sequestration, confiscation, forfeiture by order or operation of law, and transfer by order of the State or by a trustee appointed by the State. The forfeiture by virtue of a judgment of a criminal court shall also be considered a confiscation by a governmental act, if such judgment has been vacated by order of an appropriate court or by operation of law.

4. A judgment or order of a court, or of an administrative agency, which, although based on general provisions of law, was handed down solely or primarily with the purpose of injuring the party affected by it for any of the reasons set forth in Article 1 shall be deemed a specific instance of the abuse of a governmental act. The abuse of a governmental act shall also include the procurement of a judgment or of measures of execution by exploiting the circumstance that the opponent was, actually or by law, prevented from protecting his interests by virtue of his race, religion, nationality, ideology or his political opposition to National Socialism. The Restitution Authorities (Restitution Agency, Restitution Chamber and Oberlandesgericht) shall disregard any such judgment or order of a court or administrative agency whether or not in may otherwise be appealed or reopened under existing law.

Article 3

Presumption of Confiscation

1. It shall be presumed in favor of any claimant that the following transactions entered into between 30 January 1933 and 8 May 1945 constitute acts of confiscation within the meaning of Article 2:

- (a) Any transfer or relinquishment of property made during a period of persecution by any person who was directly exposed to persecutory measures on any of the grounds set forth in Article 1;
- (b) Any transfer or relinquishment of property made by a person who belonged to a class of persons which on any of the grounds set forth in Article 1 was to be eliminated in its entirety from the cultural and economic life of Germany by measures taken by the State or the NSDAP.

2. In the absence of other factors proving an act of confiscation within the meaning of Article 2, the presumptions set forth in paragraph 1 may be rebutted by showing that the transferor was paid a fair purchase price. Such evidence by itself shall not, however, rebut the presumptions of the

transferor was denied the free right of disposal of the purchase price on any of the grounds set forth in Article 1.

3. A fair purchase price within the meaning of this Article shall mean the amount of money which a willing buyer would pay and a willing seller would take, taking into consideration, in the case of a commercial enterprise, the normal good will which such enterprise would have in the hands of a person not subject to persecutory measures referred to in Article 1.

Article 4

Power of Avoidance

1. Any transaction entered into by a person belonging to a class referred to in Paragraph 1 (b) of Article 3 within the period from 15 September 1935 (the date of the first Nuernberg laws) to 8 May 1945 may, because of the duress imposed on such class, be avoided by a claimant where such transaction involved the transfer or relinquishment of any property unless:

- (a) The transaction as such and with its essential terms would have taken place even in the absence of National Socialism, or
- (b) The transferee protected the property interests of the claimant (Article 7) or his predecessors in interest in an unusual manner and with substantial success, for example, by helping him in transferring his assets abroad or through similar assistance.

2. In determining under paragraph 1 (a) whether the transaction would have taken place even in the absence of National Socialism, the fact that the transferor himself offered to sell the property to the transferee, or the transferor received a fair purchase price (see Article 3, paragraph 3) the free right of disposal of which was not denied him on any of the grounds set forth in Article 1,

shall be considered by the Restitution Authority together with all other facts, but neither fact, either singly or in conjunction with the other, shall be sufficient to show that the transaction would have taken place even in the absence of National Socialism.

3. Similarly neither of these facts, either singly or in conjunction with the other, shall be sufficient to show that the claimant is estopped from exercising the power of avoidance by reason of his own previous conduct or that of his predecessor in interest.

4. The term "claim for restitution" as used in this Law shall be deemed to include all claims based on the right to exercise the power of avoidance. The exercise of the power of avoidance shall have the effect that the property transferred or relinquished pursuant to the voided transaction shall for the purposes of this Law be deemed to be confiscated property.

5. The filing of a claim for restitution shall, whether or not it is specifically stated, be deemed to be an exercise of the right of avoidance on behalf of the person entitled to exercise such right.

Article 5

Donations

Where a person persecuted for any of the reasons set forth in Article 1 has transferred property to another gratuitously within the period from 30 January 1933 to 8 May 1945, it shall be presumed that the transfer constituted a bailment or fiduciary relationship rather than a donation. This presumption shall not apply where the personal relations between the transferor and the recipient make it probable that the transfer constituted a donation based on moral considerations (*Anstandsschenkung*); no claims for restitution may be asserted in such cases.

Article 6

Bailment and Fiduciary Relationships

1. The provisions of Parts III to VII of this Law shall not apply to bailments and fiduciary agreements entered into in order to prevent damage to property threatened for any of the reasons set forth in Article 1, or to mitigate existing damage to property inflicted for such reasons.

2. The claimant (Article 7) may at any time terminate contracts and any other arrangements described in paragraph 1, such termination to be effective immediately, any contractual or statutory provisions to the contrary notwithstanding.

3. It shall not be an admissible defense for the bailee or fiduciary that the contracts and agreements described in paragraph 1 violated a statutory prohibition existing at the time of the transaction or enacted thereafter, or that a statutory or contractual form requirement had not been complied with, provided that this failure was attributable to the National Socialist regime.

PART III: GENERAL PROVISIONS ON RESTITUTION

Article 7

Person Entitled to Restitution (Hereinafter called Claimant)

The claim for restitution shall appertain to any person whose property was confiscated (hereinafter called Persecuted Person) or to any successor in interest.

Article 8

Successorship of Dissolved Associations

1. If a juridical person or unincorporated association was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution which would have appertained to such juridical person and unincorporated association had it not been dissolved, may be enforced by a successor organization to be appointed by Military Government.

2. The provisions of paragraph 1 shall not be applicable to the organizations referred to in Article 9.

Article 9

Rights of Individual Partners

If a partnership, company or corporation organized under the Commercial Law, was dissolved or forced to dissolve for any of the reasons set forth in Article 1, the claim for restitution may be asserted by any associate (partner, member or shareholder). The claim for Restitution shall be deemed to have been filed on behalf of all associates who have the same cause of action. The claim may be withdrawn or compromised only with the approval of the appropriate Restitution Authority. Notice of the filing of the claim shall be given to all other known associates or their successors in interest and to a successor organization competent according to Article 10. Within the limits of its authority the successor organization may represent in the proceedings any associate whose address is unknown, in accordance with the provisions of Article 11.

Article 10

Successor Organization as Heir to Persecuted Persons

A successor organization to be appointed by Military Government, shall, instead of the State, be entitled to the entire estate of any persecuted person in the case provided for in Section 1936 of the Civil Code (Escheat of estate of person dying without heirs). Neither the State nor any of its subdivisions nor a political self-governing body will be appointed as successor organization. The same shall apply to other rights in the nature of escheat based on any other provision of law.

Article 11

Special Rights of Successor Organizations

1. If within six months after the effective date of this Law no petition for restitution has been filed with respect to confiscated property, a successor organization appointed pursuant to Article 10 may file such a peti-

tion on or before 31 December 1948 and apply for all measures necessary to safeguard the property.

2. If the claimant himself has not filed a petition on or before 31 December 1948, the successor organization by virtue of filing the petition shall acquire the legal position of the claimant. Only after that date, and not prior thereto, shall it be entitled to prosecute the claim.

3. The provisions of paragraph 1 and 2 hereof shall not apply if, and to the extent to which, the claimant, in the period from 8 May 1945 to 31 December 1948, has delivered a waiver of his claim for restitution, in writing and in express terms, to the restitutor, the appropriate Restitution Authority, or the Central Filing Agency.

Article 12

Obligation of Successors in Interest to Give Information

1. If so ordered by the appropriate Restitution Authority a claimant who acquired the claim for restitution directly or indirectly from the persecuted person shall submit, if known to him, either the address of his predecessors in interest, in particular of the persecuted person, or of his heirs, or execute an affidavit to the effect that he does not know the present address or any data from which it might be ascertained.

2. The successor organization appointed pursuant to Article 10 shall submit the address of the person entitled to restitution, provided it is known to it, or such data known to it which might serve to locate this person, or an affidavit signed by its legal representative to the effect that it knows neither the address of the person entitled to restitution nor any data which might serve to locate this person.

Article 13

Designation of Successor Organizations

Regulations to be issued by Military Government will provide for the manner of appointment of successor organizations, their obligations to their persecutee charges, and any further rights or obligations they may have under Military Government or German law.

Article 14

Persons Liable to Make Restitutions

The person liable to make restitution (hereinafter referred to as restitutor), within the meaning of this Law, is the present possessor of confiscated tangible property or the present holder of a confiscated intangible interest, or of an aggregate of tangible and intangible property.

Article 15

Effect of an Adjudication of a Restitution Claim

1. Unless otherwise provided in this Law, a judgment directing restitution shall have the effect that the loss of the property shall be deemed not to have occurred and that after-acquired interests by third persons shall be deemed not to have been acquired.

2. Any adjudication of a restitution claim shall be effective for and against any person who participated in the proceeding or who, being entitled to participate, was duly served.

Article 16

Alternative Claim for Additional Payment

1. If he relinquishes all other claims under this Law the claimant may demand, from the person who first acquired the property, payment of the difference between the price received and the fair purchase price of the property as defined in Article 3, paragraph 3. Proper interest shall be added to this amount in accordance with the provisions on profits contained in this Law.

2. The demand for payment shall not be permissible:

- (a) after the property has been restored to the claimant by a judgment no longer subject to appeal; or
- (b) after the Restitution Agency or Chamber has rendered a decision on the merits; or
- (c) after the claimant and the restitutor have reached an amicable agreement with regard to the restitution claim.

Article 17

Valuation

1. Where the value of property is relevant according to the provisions of this Law, increases in the price caused by the decrease of the purchasing power of money shall not be considered an enhancement in the value.

2. Future implementing regulations may provide for the valuation of property which, because not now determinable, is at present not subject to the property tax. The provision of Article 27, paragraph 2 shall remain unaffected.

PART IV: LIMITATIONS ON THE RIGHT TO RESTITUTION

Article 18

Expropriation

1. Confiscated property which, after the time of confiscation, was expropriated for a public purpose, or sold or assigned to an enterprise for

the benefit of which the right of expropriation could be exercised, shall not be subject to restitution if on the effective date of this Law the property is still used for a public purpose, and if such purpose is still recognized as lawful.

2. If property is not subject to restitution for the reasons set forth in paragraph 1, the present owner shall compensate the claimant adequately to the extent to which his claim pursuant to Article 29 et seq. infra, do not result in such compensation.

Article 19

Protection of Ordinary and Usual Business Transactions

Except as provided in Articles 20 and 21, tangible personal property shall not be subject to restitution if the present owner or his predecessor in interest acquired it in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property. However, the provisions of this article shall not apply to religious objects or to property which has been acquired from private ownership if such property is an object of unusual artistic, scientific, or sentimental personal value, or was acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of disposing of confiscated property.

Article 20

Money

Money shall be subject to restitution only if at the time he acquired the money the restitutor knew or should have known under the circumstances that it had been obtained by way of confiscation.

Article 21

Bearer Instruments

1. Bearer instruments shall not be subject to restitution if the present holder proves that, at the time he acquired the instrument, he neither knew nor should have known under the circumstances that the instrument had been confiscated at any time. Unless special circumstances indicate otherwise, good faith shall be presumed within the scope of this provision, if such property was acquired in the course of ordinary and usual business transactions, especially on the stock exchange, and if the transaction did not involve a dominant participation.

2. The provisions of paragraph 1 shall also apply to interests in bearer instruments deposited in a central account (Sammelverwahrung).

3. Bearer instruments and interests in bearer instruments shall, however, be unconditionally subject to restitution if they represent:

- (a) A participation in an enterprise with a small number of members, such as a family corporation; or
- (b) A participation in an enterprise the shares of which had not been negotiated on the open market; or
- (c) A dominant participation in an enterprise as to which it was known, generally or in the trade, that a dominant participation was held by persons who belonged to one of the classes described in Article 3 paragraph 1 (b); or
- (d) A dominant participation in a business establishment which was registered under the Third Ordinance to the Reich Citizen Law (Reichsbürgergesetz) of 14 June 1938 (RGBI. I, p. 627).

4. For the purpose of subsections (c) and (d) of paragraph 3, a participation shall be deemed to be dominant if it permitted the exercise of a considerable amount of influence upon the management of the business enterprise either by itself or on the basis of a working agreement which existed prior to or at the time of the confiscation.

Article 22

Restitution in Event of Changes in the Legal or Financial Structure of an Enterprise

If a participation of the type described in Article 21, paragraph 3 had been confiscated and if the enterprise had been dissolved or merged into, or consolidated with, or transformed into another enterprise, or had been changed in any other way in its legal or financial structure, or if its assets had been transferred wholly or in part to another enterprise, the claimant may demand that he be given an appropriate share in the modified or newly formed enterprise or in the enterprise which had acquired wholly or in part the assets of the original enterprise, thereby restoring as far as possible his original participation and the rights incident thereto.

Article 23

Enforcement of the Principles Set Forth in Article 22

The Restitution Chamber shall take all measures necessary and appropriate to effectuate the rights granted to the claimant under Article 22, provided his claims under Article 29 et seq. do not result in sufficient indemnification within the purview of Article 22. To that end the Restitution Chamber shall order, if necessary, the cancellation, new issue or exchange of shares, participation certificates, interim certificates, and other instruments evidencing a participation; or the establishment of a partnership relation between the claimant and the enterprise as described in Article 22, and it shall order the performance of any act required by law

in order to effectuate those rights. These measures shall be taken primarily at the expense of those who are liable to make restitution according to the principles of this Law. If such measures would affect any other shareholder they shall be ordered only to the extent to which such other shareholder benefited directly or indirectly from the confiscation in connection with the facts as described in Article 22; or if the enterprise itself would be liable to make restitution or to damages under this Law or under the generally applicable rules of law, especially on the principle of *respondeat superior*.

Article 24

Other Enterprises

The provisions of Articles 22 and 23 shall be applicable if the object of the confiscation was a business owned by an individual; or a participation in a partnership or a limited partnership; or a personal participation in a limited partnership corporation (*Kommanditgesellschaft auf Aktien*); or a share in an association with limited liability (*Gesellschaft mit beschränkter Haftung*) or in a cooperative; or a share of a similar legal nature.

Article 25

Service

Insofar as it may become necessary pursuant to Articles 22 to 24 to make service on any unknown associate or on any associate whose present address is unknown, service shall be made by publication pursuant to Article 61.

Article 26

Delivery of a Substitute in Lieu of Restitution

1. Where subsequent to the confiscation the object otherwise subject to restitution has undergone fundamental changes considerably enhancing its value, the Restitution Chamber may order the delivery of an adequate substitute in lieu of restitution; in determining the adequacy of the substitute the Restitution Chamber shall consider the value of the property at the time of the confiscation and the equitable interests of the parties. The claimant may, however, demand the assignment of an appropriate share in the property unless the restitutor offers a substitute of similar nature and of like value. The claimant may avail himself of the provisions of the first and second sentence above, even if the fundamental change did not result in a considerable enhancement of the value of the object.

2. The restitutor shall not be entitled to benefits of the provisions of paragraph 1 if he had acquired the object by way of an aggravated con-

fiscation within the meaning of Article 30, or if he knew or should have known under the circumstances at the time the fundamental changes were made that the object at any time had been obtained by way of an aggravated confiscation.

3. Where the restitutor has combined the object subject to restitution with another object as an essential part thereof, he may separate the latter object and appropriate it. In this case, he shall restore the object to its former condition at his own expense. Where the claimant obtained possession of the combined object prior to the separation he shall be required to permit the separation; he may, however, withhold his consent unless security is given to save him harmless from any damage resulting from the separation. The restitutor shall not have the privilege of separation if he is not entitled to compensation for expenditures according to the provisions of this Law; or if he is indemnified at least for the value which the separable part of the object would have to him after separation.

4. In determining whether property has been enhanced in value within the meaning of paragraph 1, sentence 1, only such enhancement in value for which the restitutor may claim compensation under the provisions of this Law shall be taken into account.

Article 27

Restitution of an Aggregate of Properties

1. The claimant may not limit his demand for restitution to separate items out of an aggregate of properties if the aggregate can be returned as a whole and if the limitation of the restitution to separate items would inequitably prejudice the restitutor or the creditors.

2. The claimant may refuse to include in his petition any claim against a public agency falling within the scope of Article 1 of the Laws on Judicial Aid for the Equitable Settlement of Contracts, as uniformly enacted, with the consent of the Laenderrat, in Bavaria, Hesse, and Wuerttemberg-Baden, where such claims are among the assets of a commercial enterprise or of any other aggregate of property subject to restitution.

Article 28

Protection of Debtors

Until notified of the filing of the petition for restitution, the debtor of a confiscated claim may discharge his obligation by payment to the restitutor. The same rule shall apply in favor of a debtor who prior to the entry in the Land Title Register (Grundbuch) of an objection to its correctness or a notice of restitution makes a payment to a restitutor entered in the Land Title Register.

PART V: COMPENSATION AND ANCILLARY CLAIMS

Article 29

Subrogation

1. Upon request of the claimant, a former holder of confiscated property who would be liable to restitution if he were still holding it shall turn over any compensation or assign any claim for indemnification which he might have acquired in connection with the event preventing the return of such property. Whatever the claimant receives from one of several restitutors shall be credited against the claims he holds against the remaining ones.

2. The same shall apply with respect to any compensation or any claim for compensation which the holder or former holder of confiscated property acquired in connection with deterioration of such property.

3. In case of the confiscation of a business enterprise the claim for restitution shall extend to the assets acquired after the confiscation, unless the restitutor shows that such assets were not paid for with funds of the enterprise. If the purchase was paid for out of the funds of the enterprise, a corresponding increase in the value of the business shall be deemed to constitute profits within the meaning of Articles 30, 32, and 33. This rule shall be applicable also to any other aggregate of property. If the purchase was not made with funds of the enterprise the restitutor shall have the privilege of separation as set forth in Article 26, paragraph 3, provided, however, that the claimant shall have the privilege of taking over the property pursuant to Article 26, paragraph 3, third sentence only if otherwise the operation of the enterprise would be hampered considerably.

4. Any claims of the claimant pursuant to Article 30 et seq. which are more extensive shall remain unaffected.

Article 30

Strict Liability

1. Any person who has obtained the confiscated property from the persecuted person through a transaction *contra bonos mores* or as the result of threats made by him or on his behalf, or by an unlawful taking or other tort (hereinafter referred to as aggravated confiscation), shall be liable under the general rules of the Civil Code governing tort liability for damages arising from failure to return such property on the ground of impossibility or from deterioration and also for surrender of profits and for any other indemnification provided therein.

2. The possessor or former possessor of confiscated property shall be subject to the same liability if he knew or should have known under the circumstances (within the meaning of Section 259 of the Penal Code) at

the time he acquired the property that it had been obtained at any time by way of an aggravated confiscation.

3. If the claimant is entitled to profits he may demand that they be computed on the basis of the usual rate of profits for that particular type of property, such rate to be specified by an implementing regulation, unless it is manifest in an individual case that these standard rules are substantially inappropriate.

Article 31

Mitigated Liability

1. Any holder or former holder of confiscated property who acquired the property by means of a confiscation not constituting an aggravated confiscation within the meaning of Article 30, paragraph 1 (hereinafter referred to as simple confiscation), shall be liable in damages if he is unable to return the property or if it has deteriorated, unless he can prove that he has exercised due diligence.

2. Any holder or former holder shall be similarly liable from the time when he knew, or should have known under the circumstances, that the property at any time had been obtained by way of a confiscation within the meaning of this Law.

3. Where real property or any interest in the nature of real property has been confiscated, a possessor or former possessor shall be liable according to paragraph 1, unless he shows that because of unusual circumstances he neither knew, nor should have known under the circumstances, that the property at any time had been obtained by way of confiscation within the meaning of this Law.

Article 32

Return of Profits in Case of Simple Confiscation

1. Any holder or former holder of confiscated property who at any time obtained such property by way of a simple confiscation shall pay the claimant adequate compensation for the period of time in which such holder enjoyed the profits of the property. Article 31, paragraphs 2 and 3, shall be applicable.

2. The amount of the net profits of the property less the amount of an adequate remuneration for management of the property by the restitutor shall be deemed to be an adequate compensation. The remuneration for management shall not exceed 50% of the net profits drawn from the property, except where relatively small amounts are involved. Profits which the restitutor willfully diminished or neglected to draw shall be added. Taxes paid on the net income drawn from the property and the interest on the purchase price paid by the restitutor shall adequately be taken into consideration. Paragraph 3 of Article 30 shall be applicable.

Article 33

Release from Liability

1. A holder or former holder of confiscated property shall not be liable in damages if he is unable to return the property or because the property has deteriorated, nor shall he be liable to account for profits, as long as he neither knew, nor should have known under the circumstances, that the property at any time had been obtained by way of confiscation. The provisions of Article 31, paragraph 3, shall remain unaffected.

2. Profits which under rules of good husbandry are not to be regarded as income from such property shall be returned in any event, pursuant to the rules of the Civil Code or unjust enrichment.

3. Under no circumstances shall remuneration for management be paid for a period for which the claimant cannot claim an accounting for profits.

Article 34

Compensation for Expenditures

1. Ordinary expenses for the maintenance of property subject to restitution shall not be refunded; they may, however, be taken into consideration in determining the net profits under Articles 30 and 32.

2. For other necessary expenditures compensation may be demanded to the extent that such expenditures should not have been written off in the course of proper management of the confiscated property.

3. For other than necessary expenditures the restitutor may demand compensation only to the extent that such expenditures should not have been written off in the course of proper management of the confiscated property and only to the extent to which the value of the property is still enhanced by such expenditures at the time of the restitution. In this case the liability of the claimant shall be limited to the restituted property and any other compensation to which he is entitled under this Law. The exercise of the claimant's privileges of limiting his liability shall be governed by Sections 1990 and 1991 of the Civil Code.

4. A person who at any time obtained the confiscated property by way of an aggravated confiscation may demand compensation only for necessary expenditures under the conditions set forth in paragraph 2 hereof and under the further condition that such expenditures were in the claimant's interest. The same rule shall apply to any holder or former holder of the confiscated property from the time when he knew, or should have known under the circumstances, that the property at any time has been obtained by way of an aggravated confiscation.

5. Where the provision of Article 26, paragraph 1 are found to be applicable, no compensation can be claimed for any expenditures which resulted in a fundamental change substantially enhancing the value of the property within the meaning of Article 26, paragraph 1.

Article 35

Duty to Furnish Particulars

The parties shall be liable to furnish particulars, where such information is necessary to effectuate claims under this Law. Sections 259 to 261 of the Civil Code shall be applicable.

Article 36

Title to Increase

The provisions of the Civil Code shall be applicable to the acquisition of title to the produce and other increase of confiscated property. Where the possessor or former possessor did not obtain the property by way of an aggravated confiscation, he shall be deemed to be the owner of the produce and other increase of the confiscated property, without prejudice, however, to his obligation to return any profits.

PART VI: CONTINUED EXISTENCE OF INTERESTS
AND LIABILITY FOR DEBTS*Article 37*

Continued Existence of Interests

1. Any interest in the confiscated property shall continue to be effective to the extent to which it existed prior to the act constituting the confiscation, and insofar as it has not been extinguished or discharged thereafter. The same shall apply to any interest created at a later date to the extent to which the total amount of all claims (principal and accessory claims) does not exceed the total amount of all such claims as they existed prior to the act constituting the confiscation (hereinafter referred to as limit of encumbrances). An interest which does not involve payment of money shall continue to be effective only where an interest of the same kind already existed prior to the confiscation and the interest subsequently created is not more burdensome than that existing at the time of the confiscation, or where such interest would have come into existence even though the property had not been confiscated.

2. The limit of encumbrances shall be raised to the extent to which any interest of a third person results from expenditures for which the restitutor may claim compensation pursuant to Article 34. Any other interest of a third person which exceeds the limit of encumbrances set forth in paragraph 1 of this Article and which results from expenditures for which the restitutor cannot claim compensation pursuant to Article 34 shall be extinguished, unless at the time of the restitution the value of the object is still increased correspondingly as the result of the expenditure and the third person shows that he neither knew, nor should have known under the

circumstances that the property had been obtained by way of an aggravated confiscation.

3. Interests in the property subject to restitution which, in connection with the confiscation, had been created in favor of the claimant or his predecessor in interest shall continue to be effective irrespective of the limit of encumbrances. This shall be without prejudice to any claim of the claimant for the restitution of such interest in case they had been confiscated.

4. Interests resulting from the conversion of the Home-Rent Tax, with the exception of overdue payments, shall continue to be effective irrespective of the limit of encumbrances.

Article 38

Devolving of Encumbrances

If real property has been encumbered by any transaction, legal act, or any governmental act constituting a confiscation within the meaning of this Law, such an encumbrance shall devolve on the claimant and shall not be considered in computing the limit of encumbrances as provided in Article 37. This shall apply particularly to encumbrances which were entered in the Land Title Register (Grundbuch) in connection with the Capital Flight Tax, the Property Tax on Jews and similar enactments.

Article 39

Personal Liability

If, prior to the confiscation of real property, the claimant or his predecessor in interest was personally liable in respect of any debt which was secured by a mortgage, land charge (Grundschuld) or annuity charge (Rentenschuld) on the real property, he shall assume personal liability at the time of recovery of title to the extent to which the mortgage, land charge or annuity charge continues to be effective under the preceding provisions. The same shall apply in case of obligations in regard to which the restitutor may demand to be released pursuant to Article 34 of this Law and Section 257 of the Civil Code. The same shall apply also in the case of liabilities which continue to be effective according to Article 37, paragraph 1, second sentence, and which replace charges for which the claimant or his predecessor in interest had been personally liable.

Article 40

Demand for Assignment

1. The claimant may demand the assignment to him, without compensation, of any mortgage, land charge or annuity charge against real property subject to restitution which is held by any holder or former holder of such

property who at any time obtained the property by way of an aggravated confiscation. This shall not apply to the personal debt on which the mortgage is based. Any interest created prior to the confiscation shall be subject to the provisions of Article 46, paragraph 3.

2. The provisions of this Article shall not apply to encumbrances created pursuant to the provisions of this Law.

Article 41

Liability for Debts of a Business Enterprise

1. If the claimant recovers a business enterprise or another aggregate of properties, the creditors holding debts incurred in the operation of the enterprise or obligations with which the aggregate of properties has been encumbered may, from the time of the recovery, also assert against the claimant such claims as existed at such time.

2. In this case the liability of the claimant shall be limited to the restituted property and any other compensation to which he is entitled under this Law. The claimant's privilege of limiting his liability shall be governed by Sections 1990 and 1991 of the Civil Code.

3. The claimant shall not be liable under paragraphs 1 and 2 to the extent to which the total amount of liabilities exceeds the limit of encumbrances to be computed in an analogous application of Article 37, and insofar as the excess in the amount of liabilities is not covered by an excess of assets resulting from the application of Article 29, paragraph 3. In such case the Restitution Chamber, in its equitable discretion, shall take the requisite measures in analogous application of Article 37. Debts held by creditors who neither knew nor should have known under the circumstances that the business enterprise or other aggregate of properties at any time had been obtained by way of confiscation within the meaning of this Law shall have preference. Liabilities of equal priority shall be reduced pro rata, if necessary.

Article 42

Leases

1. If a restitutor or any former possessor has leased real property to a third person, the claimant may terminate the lease by giving notice, the termination to become effective on the date prescribed by Law. Such notice cannot be given until the Restitution Authority has determined that the property is subject to restitution, and such determination is no longer subject to appeal, or until the fact that the property is subject to restitution has been acknowledged in any other way. The notice must be given within three months from such date, or from the date when the claimant in fact takes possession of the real property, if he takes possession at a later date.

2. The provisions of the Law for the Protection of Tenants (Mieterschutzgesetz) in the version of 15 December 1942 (RGB1. I, page 712) shall not apply to any restitutor or his predecessor in interest who obtained the property subject to restitution by way of an aggravated confiscation or who, at the time he acquired the property, knew, or should have known under the circumstances, that the property at any time had been obtained by way of an aggravated confiscation. The provisions of the Law for the Protection of Tenants shall also not apply insofar as the claimant is in need of adequate dwelling space for himself or his close relatives. Similarly, the Law for the Protection of Tenants shall not apply if dwelling space, which at the time of the confiscation or of the filing of the petition for restitution was used in connection with the operation of a business enterprise subject to restitution, is needed for the continued operation of such enterprise. The provisions of the Law for the Protection of Tenants shall not be applicable to space used for commercial purposes if the claimant has a legitimate interest in the immediate return of such space.

3. Leases entered into with the approval of Military Government may be cancelled only with the consent of Military Government.

Article 43

Employment Contracts

Irrespective of any contractual provision to the contrary, the claimant may terminate any existing employment contract made since the confiscation by the restitutor or any former holder of a business enterprise subject to restitution by giving notice as provided in a collective labor-agreement or in the absence thereof within the statutory period; this shall not prejudice the right of the claimant to terminate an employment contract for just cause without notice. Notice cannot be given until the Restitution Authorities have determined that the enterprise is subject to restitution and such determination is no longer subject to appeal, or until the fact that an enterprise is subject to restitution has been acknowledged in some other way. Such notice must be given within three months from such date, or from the time when the claimant in fact obtains possession of the enterprise, if he obtains possession at a later date.

PART VII: CLAIMS OF THE RESTITUTOR FOR REFUND AND INDEMNIFICATION

Article 44

Obligation to Refund

1. In exchange for the restitution of the confiscated property the claimant shall refund to the restitutor the consideration received by him, in kind if possible. This amount shall be increased by the amount of any en-

cumbrance against the confiscated property existing at the time of confiscation and discharged thereafter, unless such encumbrance has been replaced by another encumbrance which continues to be effective, and unless the discharged encumbrance was created as the result of a confiscation within the meaning of this Law.

2. Where several items of property were confiscated for a consideration consisting of a lump sum, but restitution takes place in regard to some of these items only, the lump sum shall be reduced pro rata, in the ratio which at the time of the confiscation existed between the lump sum and the value of those items to be restituted.

3. If at the time of the confiscation the claimant, for any of the reasons set forth in Article 1, did not obtain, wholly or in part, the power freely to dispose of the consideration received, the refund shall be diminished by a like amount. The claimant shall assign to the restitutor any claim for indemnification to which he may be entitled with respect to this amount.

4. Under no circumstances shall the claimant be required to refund any amount exceeding the value of the confiscated property at the time of restitution, less the value of the encumbrance recognized against the property.

Article 45

Equitable Lien

The restitutor shall have no equitable lien (*Zurueckhaltungsrecht*) for his claims insofar as such lien would substantially delay the speedy restitution of the confiscated property. The same shall apply to any execution or attachment of the confiscated property based on any counterclaim.

Article 46

Judicial Determination of Terms of Payment

1. The Restitution Authorities shall determine the terms of payments to be made in connection with restitution, taking into consideration the purpose of this Law, the debtor's ability to pay, and existing statutory prohibitions and limitations on payments.

2. In cases involving the restitution of real property and interests in the nature of real property, the claimant may demand that an adequate period not exceeding ten years be allowed for the payment of the refund and expenditures, provided that a refund-mortgage bearing 4% interest be executed on the property in favor of the restitutor. The terms shall be specified by the Restitution Authorities upon application.

3. In cases provided for in Article 34, paragraph 3, and Article 37, paragraph 2, the Restitution Authorities shall determine the maturity dates of debts and the terms of payment in such a way that the restitution of the

confiscated property will not be prejudiced under any circumstances nor its enjoyment by the claimant unduly impaired.

Article 47

Claims for Indemnification

1. Claims for indemnification which the restitutor may have against any of his predecessors in interest shall be governed by the rules of the Civil Law. The liability to make restitution shall be deemed to constitute a defect in title within the meaning of the Civil Code. Section 439, paragraph 1 of the Civil Code shall not be applicable.

2. In case of restitution of real or tangible personal property, any claim provided in paragraph 1 may be asserted not only against the original party to the contract but also against any predecessor in interest who was not in good faith at the time he acquired the property. Such predecessors in interest shall be liable as joint debtors. They shall not be liable, if the restitutor himself was not in good faith.

Article 48

Lien of Third Persons on Claims of the Restitutor

1. Any interest in confiscated property which ceases to be effective pursuant to Article 37 shall remain a lien on any claim which the restitutor may have for payment of expenditures, refund of consideration and for indemnification under Articles 34, 44 and 47; and on the proceeds which the restitutor obtains on the basis of such claims.

2. This provision shall not apply in favor of such persons who by granting loans have aided an aggravated confiscation.

PART VIII: GENERAL RULES OF PROCEDURE

Article 49

Basic Principles

1. The restitution proceedings shall be conducted in such a manner as to bring about speedy and complete restitution. The Restitution Authorities may deviate in individual cases from procedural rules declared applicable by this Law, if to do so will serve to accelerate restitution, provided that such deviation does not impair complete investigation of the facts or the legal right to a fair hearing.

2. In ascertaining the facts of the case the Restitution Authorities shall bear fully in mind the circumstances in which the claimant finds himself as a result of measures of persecution for the reasons set forth in Article 1. This shall particularly apply where the producing of evidence has been rendered difficult or impossible through the loss of documents, the death or

unavailability of witnesses, the residence abroad of the claimant, or similar circumstances. Affidavits of the claimant and his witnesses shall be admitted. This shall apply even though the affiant died after signing the affidavit.

Article 50

Right of Succession and Foreign Law

1. Any person who bases any claim upon a right of succession on death must establish such right.

2. Foreign law must be proved so far as it is unknown to the Restitution Authorities.

Article 51

Presumption of Death

Any persecuted person, whose last known residence was in Germany or a country under the jurisdiction of or occupied by Germany or its allies and as to whose whereabouts or continued life after 8 May 1945 no information is available, shall be presumed to have died on 8 May 1945; however, if it appears probable that such a person died on a date other than 8 May, the Restitution Authorities may deem such other date to be the date of death.

Article 52

Safeguarding

1. The Restitution Authorities shall, if the situation so requires, safeguard confiscated property in a suitable manner. They may to that end issue temporary injunctions (*einstweilige Verfeugung*) or restraining orders (*Arrest*), either upon their own motion or upon application. Such injunctions or orders shall be modified or vacated if the property can be safeguarded by any other measures than those taken, or if there is no further need for their continuation.

2. The provisions of the Code of Civil Procedure on "*Arrest und einstweilige Verfeugung*," as amended or as hereafter amended shall be applicable.

Article 53

Trustee

1. Where supervision of the confiscated property is necessary, a trustee shall be appointed provided no other authority exercises jurisdiction over such property.

2. Unless provided otherwise by implementing regulation, the rules concerning the Administration of Blocked Property shall apply to the appointment and supervision of a trustee.

*Article 54*Jurisdiction of Other Authorities to Take Measures as
Set Forth in Articles 52 and 53

Where the safeguarding measures described in Articles 52 and 53 are within the jurisdiction of another agency, the Restitution Authorities will request the appropriate agency to take such measures.

PART IX: FILING OF CLAIMS

Article 55

Central Filing Agency

1. A Central Filing Agency for the filing of petitions for restitution will be established under regulations to be issued by Military Government.

2. The Central Filing Agency shall transmit the petition to the appropriate Restitution Agency or Agencies.

Article 56

Form Requirements and Period of Limitation for Filing Claims

1. A petition for restitution pursuant to this Law shall be submitted to the Central Filing Agency in writing on or before 31 December 1948. Details as to the form of filing will be provided in regulations to be issued by Military Government.

2. The petition shall be substantiated by documents or affidavits.

3. The petition may be effectively filed by any one of several co-claimants.

4. Any petition filed by a person who is not entitled to restitution of the property, shall be deemed to have been effectively filed in favor of the true claimant, or where Articles 8, 10 and 11 are applicable, in favor of the successor organizations mentioned therein. The same shall apply to the filing of petition by any such successor organization.

Article 57

Relation to Other Remedies

Unless otherwise provided in this Law, any claim within the scope of this Law may be prosecuted only under the provisions and within the periods of limitation, set forth in this Law. However, any claim based on tort, outside the scope of this Law, may be prosecuted in the ordinary courts.

Article 58

Contents of Petition to be Filed

1. The petition shall contain a description of the confiscated property. Time, place and circumstances of the confiscation shall be stated as exactly

as is possible under the circumstances. If a claim is made for the payment of money, the sum demanded shall be specified if feasible; the basis for the claim shall be substantiated.

2. So far as known to the claimant, the petition shall contain the name and address of the restitutor, the names and addresses of all persons having or claiming to have an interest in the property, lessees and tenants, if any, and a statement as to all encumbrances existing at the time of the confiscation of the property.

3. The Central Filing Agency or the Restitution Authorities may request the claimant to supplement his petition by a statement containing the data set forth in paragraphs 1 and 2. They may further require the claimant to swear to his statement.

4. If the claimant does not have his domicile or residence in one of the four Zones of Occupation of Germany or in the City of Berlin, and if he has not appointed there an attorney authorized to accept service of legal papers, he may nominate in his petition a person domiciled there, authorized to receive such papers. If he fails to nominate such a person, the Restitution Agency shall do so and notify the claimant of the appointment.

5. After a petition has been filed, a receipt shall be issued by the Central Filing Agency notifying the claimant of the Restitution Agency or Agencies to which the petition has been transmitted pursuant to Article 55, paragraph 2.

6. The period of limitation provided for in Article 56, paragraph 1, shall be deemed to have been complied with by the filing of a written petition with the Central Filing Agency, although it is incomplete or in improper form.

Article 59

Venue

1. Any petition for restitution shall be transmitted by the Central Filing Agency to the Restitution Agency of the district in which the property subject to restitution is located. If it appears that a petition has been transmitted to a Restitution Agency which lacks jurisdiction, such petition shall be referred by such Restitution Agency to the Restitution Agency having jurisdiction. The order of reference shall be binding on the Agency to which the petition has been referred.

2. An implementing regulation may provide for additional rules on venue, especially of claims for compensation and ancillary claim.

Article 60

Jurisdiction of Subject Matter

The Restitution Authorities shall have jurisdiction of the subject matter irrespective of whether under any other law a claim for restitution would

come within the jurisdiction of any ordinary, administrative, or other court, or whether no court whatsoever would have jurisdiction.

Article 61

Notice of Claim

1. The Restitution Agency shall give notice of the petition by formal service on the parties concerned requiring that an answer be filed within two months. Parties concerned shall be deemed the restitutor, persons holding interests *in rem*, lessees or tenants of the confiscated property, as well as any other person the claimant might demand to be joined in the proceedings. If the German Reich, a Land, a former Land, the former NSDAP or one of its formations or affiliated organizations is a party concerned, service shall be made upon the State Minister of Finance. In the cases described in sentence three the State shall be authorized to join the proceedings as a party in interest.

2. Where the restitutor or his present address is unknown or where it appears from the petition that any unknown third person may have an interest in the confiscated property, the Restitution Agency shall cause the service by publication of the petition; the restitutor and the unknown third persons shall be requested thereby, within two months, to declare their interests together with proof thereof with the Restitution Agency. Service by publication shall be made pursuant to Section 204, paragraph 2, of the Code of Civil Procedure as amended by Control Council Law No. 38 in the form prescribed for a summons. Service shall be deemed to be effective one month after publication in the periodical specified in Section 204, paragraph 2, of the Code of Civil Procedure.

3. Upon service of the petition the case shall be deemed to be pending (*rechtshaengig*).

4. When the claim for restitution affects real property or an interest in the nature of real property, the Restitution Agency shall request that an entry in the Land Title Register be made to the effect that a claim for restitution has been filed. (Notice of restitution, *Rueckerstattungsvermerk*.) The notice of restitution shall be effective against any third person.

5. The provisions of the Code of Civil Procedure concerning Third Party Practice shall be applicable.

Article 62

Procedure before the Restitution Agency

1. If no objection has been raised against a petition within the time specified in the notice or in the service by publication, the Restitution Agency shall issue an order granting the petition. Where there is no dis-

pute as to the limit of encumbrances and as to the continued existence of interests, it shall also make the appropriate findings on these matters.

2. If, however, the claim for restitution does not state a cause of action, or the truth of any of the allegations contained therein is controverted by entries in public records or by public documents available to the Restitution Agency, the latter shall order the claimant to submit a statement within an appropriate period of time. The Agency shall dismiss the petition on the merits if the claimant does not submit within this period an explanation justifying his petition or supplementing the facts alleged therein.

3. If an objection is made the Restitution Agency shall attempt to reach an amicable settlement unless the futility of such effort is evident. When an amicable settlement has been reached the Restitution Agency shall, on application, record the settlement in writing, and shall deliver a certified copy of the settlement to the parties concerned.

Article 63

Reference to the Court

1. If an amicable agreement cannot be reached in whole or in part or if the measures to be taken are not within the power of the Restitution Agency, it shall refer the case to the extent necessary to the Restitution Chamber of the District Court having jurisdiction over the Restitution Agency. This shall apply in particular also to cases where only the limit of encumbrance, or the continued existence of interests or the liability for debts is disputed.

2. Implementing regulations may confer jurisdiction on certain District Courts or on District Courts other than those specified in paragraph 1.

3. The Restitution Agency may stay the proceedings for a period not exceeding six months before referring the case to the Restitution Chamber, if the claimant consents and an amicable agreement may be expected.

Article 64

Appeal (Einspruch)

1. Any party to the case, by filing an appeal with the Restitution Agency, may appeal to the Restitution Chamber from a decision of the Restitution Agency rendered pursuant to Article 59, paragraph 1, second sentence, or Article 62, paragraphs 1 and 2; the period in which to file the appeal shall be one month; it shall be three months, if the appellant resides in a foreign country. The period to appeal shall begin to run with the service of the decision to be appealed from. Article 61, paragraph 2, shall be applicable.

2. The appeal may be based only on a violation of Article 59, paragraph 1, second sentence, or Article 62, paragraphs 1 or 2.

*Article 65**Execution*

Agreements recorded by the Restitution Agency and orders of the Restitution Agency which are no longer subject to appeal may be enforced by execution pursuant to the provisions of the Code of Civil Procedure. For this purpose, the Restitution Agency shall have the powers of a court (Vollestreckungsgericht). In effecting execution, the Restitution Agency may avail itself of the services of other agencies, especially of the courts.

PART X: JUDICIAL PROCEEDINGS

Article 66

Members of the Restitution Chamber

The Restitution Chamber shall be composed of a Presiding Judge and two associate judges, eligible for the office of judge or for the higher Administrative Service. The Presiding Judge shall be a judge normally assigned to a court. The Associate Judges shall be appointed for a term of three years, unless they are professional judges. One of the three judges shall belong to a class of persons persecuted for any of the reasons set forth in Article 1.

Article 67

Procedure

1. The Restitution Chamber shall adjust the legal relations of the parties in interest according to the provisions of this Law.

2. Unless this Law provides otherwise, the procedure shall be governed by the rules of procedure applicable in matters of non-contentious litigation, subject, however, to the following modifications:

- (a) The Chamber shall order an oral hearing; the hearing shall be public.
- (b) The proceedings may be stayed for a period not to exceed six months, at the request of the claimant. Repeated stays may be granted after the case has been reopened.
- (c) The Chamber shall render partial judgment on one or more of the claims before it, or on part of a claim, where the determination of any counterclaim, offset or equitable lien or any other defense in the nature of an offset or a counterclaim would substantially delay the decision on restitution.
- (d) Without prejudice to the final decision, the Chamber may order the temporary surrender of the confiscated property to the claimant

either with or without security. In this case the claimant shall have, with respect to third persons, the rights and obligations of a trustee.

Article 68

Form and Contents of the Decision

1. The decision of the Restitution Chamber shall be pronounced in an order supported by an opinion; the order shall be served on the parties concerned. Immediate execution may be had on this order, a subsequent appeal notwithstanding. The provisions of Sections 713, paragraph 2, and Sections 713-a to 720 of the Code of Civil Procedure shall be applicable.

2. An appeal (*sofortige Beschwerde*) may be taken from this order within one month; the appeal may be filed within three months if the appellant resides in a foreign country. The time to appeal shall begin to run from the date of service of the order; Article 61, paragraph 2 shall be applicable. The Civil Division of the Court of Appeals (*Oberlandesgericht*) shall hear the appeal. The appeal may be based only on the ground that the decision violated the law. The provisions of Sections 551, 561 and 563 of the Code of Civil Procedure shall be applicable.

3. Implementing regulations may confer jurisdiction to hear such appeals on a certain Court of Appeals.

Article 69

Board of Review

A Board of Review shall have the power to review any decision on any claim for restitution under this Law and to take whatever action is deemed necessary with respect thereto. Regulations to be issued by Military Government will provide for the appointment and composition of the Board, its jurisdiction, procedure, and such other matters as are deemed appropriate.

PART XI: SPECIAL PROCEEDINGS

Article 70

Petition by the Public Prosecutor

Where no petition for the restitution of confiscated property has been filed on or before 31 December 1948, the Public Prosecutor at the seat of the Restitution Chamber may file the petition for restitution on behalf of a successor organization provided for in Article 10. This provision shall not apply if the claimant has waived his claim for restitution in accordance with Article 11, paragraph 3. The petition of the Public Prosecutor must be filed on or before 30 June 1949.

Article 71

Conflict of Jurisdiction

1. If claims as described in Articles 1 to 48 are asserted by a person entitled to restitution in a court proceeding including the stage of compulsory execution by way of complaint, defense or counterclaim, the Court shall notify the Restitution Agency. The Court may, and on request by the Restitution Agency must, stay the proceedings or temporarily suspend execution by an order from which no appeal may be taken. The Restitution Agency may direct that the claim be dealt with under this Law to the exclusion of the jurisdiction of the ordinary civil courts, or it may authorize the claimant to prosecute his claim before the ordinary civil courts; such authorization shall be binding on the latter courts. If an action in the ordinary civil courts is terminated because the claim is being dealt with under this Law, the court fees shall be remitted and neither party shall be entitled to costs incurred out of court.

2. The Court shall report to the Central Filing Agency any action taken under paragraph 1.

PART XII: ASSESSMENT OF COSTS

Article 72

Costs

1. As a rule no court fees shall be assessed in favor of the State (Gerichtskosten) in proceedings before Restitution Authorities. However, implementing regulations may provide for the assessment of costs, fees and expenses.

2. No advance payment, or bond or security for costs may be demanded from a claimant.

PART XIII: DUTY TO REPORT AND PENALTIES

Article 73

Duty to Report

1. Anyone who has, or has had in his possession, at any time after it was transferred by or taken from a persecuted person, any property which he knows or should know under the circumstances

- (a) is confiscated property within the meaning of the provisions of Article 2; or
- (b) is presumed to be confiscated property pursuant to the provisions of paragraph 1 of Article 3; or
- (c) has been at any time the subject of a transaction which may be avoided pursuant to the provisions of paragraph 1 of Article 4, shall

report this fact in writing to the Central Filing Agency on or before 15 May 1948.

The report to be filed hereunder shall show the exact circumstances under which the reporting person obtained possession of the property; it shall also contain the name and address of the person from whom the reporting person acquired the property as well as the consideration paid, and in case the property no longer is in his possession, the name of the person to whom the property was transferred.

2. The following property need not be reported:

- (a) Tangible personal property which had been acquired in the course of an ordinary and usual business transaction in an establishment normally dealing in that type of property, provided, however, that property acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of auctioning or otherwise disposing of confiscated property, must be reported;
- (b) Tangible personal property, the value of which did not exceed RM 1,000 at the time of the confiscation;
- (c) Donations made to close relatives (as defined in Section 52, paragraph 2 of the Criminal Code) and donations which without doubt were made for moral consideration;
- (d) Property which has already been restituted and property as to which the claimant has relinquished his right of restitution expressly and in writing at any time between 8 May 1945 and the effective date of this law.

3. No report filed pursuant to paragraph 1 by any person shall be considered, in proceedings before a Restitution Authority, as an admission of the reporting party that the property so reported is subject to restitution or as a waiver of any defense he might have had if the report had not been filed. It shall be admissible, however, as an admission of the facts stated therein.

4. The Central Filing Agency upon receiving a report under this Article shall forward a copy of the report to the appropriate Restitution Agency or Agencies in each district in which property affected by the report is situated. All reports filed pursuant to the provisions of this Article shall be open to inspection.

Article 74

Obligation to Inspect the Land Title Register and Other Public Registers.

1. Anyone holding real property or an interest in the nature of real property, shall ascertain by inspection of the Land Title Register whether

or not the property in question must be reported. The same shall apply with respect to other property interests which are recorded in any other public register.

2. Whenever a public authority or any other public agency learns of the whereabouts of property which must be reported, it shall report such fact without delay to the Central Filing Agency. Article 73, paragraph 4 shall be applicable.

Article 75

Penalties

1. Any person who

- (a) intentionally or negligently fails to comply with his duty to report as set forth in Articles 73 and 74; or,
- (b) knowingly makes any false or misleading statements to the Restitution Authorities,

shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. No penalty shall be imposed in the case of subparagraph (a), where the report required by this Law has been made voluntarily and prior to discovery.

Article 76

Penalties (continued)

1. Whoever alienates, damages, destroys, or conceals any property coming under the provisions of this Law in order to thwart the rights of a claimant, shall be punished with imprisonment not exceeding five years, or a fine, or both, unless heavier penalties under any other law are applicable.

2. Confinement in a penitentiary up to five years may be imposed in especially serious cases.

3. The attempt shall be punishable.

Article 77

Penalties (continued)

In the cases within the scope of Articles 75 and 76, nobody may plead ignorance of facts which he could have ascertained by the inspection of public books and registers, if and to the extent to which Article 74 imposed on him the obligation of such inspection.

PART XIV: RE-ESTABLISHMENT OF RIGHTS OF SUCCESSION AND ADOPTION

Article 78

Exclusion from Inheritance

1. An exclusion from the right of succession or the forfeiture of an estate which occurred during the period from 30 January 1933 to 8 May 1945 by virtue of a law or an ordinance for any of the reasons set forth in Article 1 shall be deemed not to have occurred.

2. The succession shall be deemed to have occurred at the effective date of this Law for the purpose of determining the periods of limitation.

Article 79

Avoidance of Testamentary Dispositions and of Disclaimers of Inheritance

1. Testamentary dispositions and contracts of inheritance made in the period from 30 January 1933 to 8 May 1945 in which any descendant, parent, grandparent, brother, sister, half-brother, half-sister, or their descendants, as well as a spouse, was excluded from inheritance for the purpose of avoiding a seizure of the estate by the State, expected by the testator for any of the reasons set forth in Article 1, shall be voidable. The power of avoidance shall be governed by Sections 2080 et seq. or 2281 et seq. of the Civil Code, unless paragraph 3 *infra* provides otherwise.

2. Disclaimers of inheritance by persons described in paragraph 1 shall be voidable, provided that such disclaimers were made within the period from 30 January 1933 to 8 May 1945 in order to prevent an expected seizure of the property by the State for any of the reasons set forth in Article 1. The right of avoidance shall be governed by Sections 1954 et seq. of the Civil Code, unless paragraph 3 of this Article provides otherwise.

3. Testamentary dispositions, contracts of inheritance or disclaimers of inheritance must be voided on or before 31 December 1948. The exercise of the power of avoidance within this period shall be deemed timely.

Article 80

Testamentary Disposition of a Persecuted Person

1. A testamentary disposition made between 30 January 1933 and 8 May 1945 shall be valid in spite of complete non-compliance with form requirements if the testator made such disposition in view of an actual or imaginary immediate danger to his life based on measures of persecution for any of the reasons set forth in Article 1, and where the circumstances were such that

he could not, or could not be expected to, comply with the statutory form requirements.

2. Any testamentary disposition coming within the scope of paragraph 1 shall be deemed not to have been made if the testator was still capable of making a testamentary disposition complying with the statutory form requirements after 30 September 1945.

Article 81

Re-Establishment of Adoptions

1. If an adoption relationship was cancelled within the period from 30 January 1933 to 8 May 1945 for any of the reasons set forth in Article 1, such relationship may be reinstated *nunc pro tunc* by a contract between the foster parent or his heirs and the child or his heirs. Sections 1741 to 1772 of the Civil Code, with the exception of Sections 1744, 1745, 1747, 1752 and 1753, shall apply to the contract of reinstatement. A contract of reinstatement may be judicially confirmed even after the death of the parties to it. If one of the parties concerned is not available, a guardian (Pfleger) may be appointed to represent his interests in the proceedings to reinstate the adoption.

2. Where an adoption was cancelled by decision of a court during the period from 30 January 1933 to 8 May 1945 for any of the reasons set forth in Article 1, and if no facts have appeared which thereafter would have caused contracting parties to revoke the adoption on their own initiative, either party to the contract or his heirs may demand that the decision be vacated.

3. The local court (Amtsgericht) which cancelled the adoption shall have jurisdiction in the cases set forth in paragraph 2. The principles of paragraph 1, fourth sentence, above, shall be applicable. The decision of the court shall be discretionary and shall take into account the equities of the parties. When the cancellation of the adoption is vacated, the adoption shall be reinstated *nunc pro tunc*. The court may exclude the retroactive effect of its decision from certain parts thereof.

4. No costs or fees shall be charged in these proceedings.

5. The application for re-establishment of an adoption must be made on or before 31 December 1948.

Article 82

Jurisdiction

Any claims arising under Articles 78 to 81 shall be decided by the ordinary civil courts. No filing with the Central Filing Agency is required.

PART XV: REINSTATEMENT OF TRADE NAMES AND OF
NAMES OF ASSOCIATIONS

Article 83

Re-Registration of Cancelled Trade Names

1. Where a trade name was cancelled in the Commercial Register within the period from 30 January 1933 to 8 May 1945 after the business establishment had been closed for any of the reasons set forth in Article 1, the cancelled trade name shall be re-registered on application if the business is reopened by its last owner, or owners or their heirs.

2. If the closed business establishment was conducted at the time of its discontinuation by a single owner, the last owner or his heirs shall be entitled to demand the re-registration of the cancelled trade name. If there are several heirs, and if not all of them participate in the resumption of the enterprise, the re-registration of the cancelled trade name may be demanded, provided the heirs who do not participate in the business assent to the resumption of the trade name.

3. If at the time of its closing the business establishment was conducted by several personally liable partners, re-registration of the cancelled trade name may be demanded if all the personally liable partners establish a business enterprise or if one or several of them do so with the consent of the remaining ones; with respect to heirs of partners the principle of paragraph 2 shall be applicable.

Article 84

Change of Trade Name

Where a trade name has been changed in the period from 30 January 1933 to 8 May 1945 for any of the reasons set forth in Article 1, the former trade name may be restored upon the application of the person who owned the enterprise at the time the change was made or of his heirs, provided they now own the enterprise. The principles of Article 83, paragraph 2, second sentence, and paragraph 3, shall be applicable.

Article 85

Names of Corporations

The principles of Articles 83 and 84 shall be applicable to the trade names of corporations.

Article 86

Reinstatement of Trade Names in Other Cases

Whenever the use of the former trade name is essential for the purpose of full restitution, the Restitution Chamber may permit the reinstatement

of a cancelled or changed trade name in cases other than those provided for in Articles 83 to 85.

Article 87

Names of Associations and Endowments (Stiftungen)

Article 86 shall be applicable to the resumption of the name by an association or an endowment.

Article 88

Procedure

Applications for the registration in the Commercial Register of former trade names must be filed within the period provided for in this Law for the filing of claims for restitution. The Amtsgericht in its capacity as Court of Registry shall have jurisdiction over these applications except in the cases provided for in Article 86. Otherwise the procedure shall be governed by the rules of procedure applicable in matters of non-contentious litigation. No costs or fees shall be charged in these proceedings.

PART XVI: FINAL PROVISIONS

Article 89

Claims Reserved to Special Legislation

The reinstatement of lapsed interests arising out of insurance contracts and of lapsed copyrights and industrial rights (patents, etc.) may be regulated by special legislation.

Article 90

Statute of Limitations

To the extent to which the statute of limitations or prescriptive rights of the Civil Code might defeat any claim falling under this Law, the statute of limitations or a prescriptive period shall not be deemed to have expired until six months after such cause of action arises by reason of operation of this Law, but in no event prior to 30 June 1949.

Article 91

Taxes and Other Levies

1. Taxes and other public levies shall not be imposed in connection with restitution.

2. No taxes, including inheritance taxes, or other public assessments, fees or costs shall be refunded or subsequently levied in connection with the return of confiscated property.

Article 92

Implementing and Carrying-out Provisions

1. The Restitution Agencies will be designated by implementing regulations.

2. Unless otherwise provided in this Law, or ordered by Military Government, the Minister President of each State or any Ministers designated by him, shall issue the legal and administrative regulations necessary for the implementation of this Law.

Article 93

Jurisdiction of German Courts

1. German Courts are hereby authorized to exercise jurisdiction in civil cases arising under this Law against any stateless person having the assimilated status of United Nations displaced persons or against any national of the United Nations not falling within categories (3), (4), (5) of Section 10 (b) in Article VI of Military Government Law No. 2, as amended or as hereafter amended.

2. German Courts are hereby authorized to exercise jurisdiction in cases involving offenses against any of the provisions of Articles 73 to 77 of this Law by persons not exempted from the jurisdiction of the German Courts under Section 10 (a) in Article VI of Military Government Law No. 2 as amended or as hereafter amended.

Article 94

Official Text

The German text of this Law shall be the official text and the provisions of Paragraph 5 of Article II of Military Government Law No. 4, as amended, shall not apply.

Article 95

Effective Date

This Law shall become effective in Bavaria, Bremen, Hesse and Wuerttemberg-Baden on 10 November 1947.

By Order of Military Government

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LEGAL PROBLEMS ARISING FROM THE UNITED NATIONS TRUSTEESHIP SYSTEM

BY FRANCIS B. SAYRE *

I. INTRODUCTION ¹

Non-self-governing territories in the past have been too often breeding spots for war. Many contain valuable raw materials or offer rich markets; some command highly desirable shipping or aviation routes; still others offer potential naval and military bases of strategic significance. Such territories frequently become centers of international rivalry or even conflict.

Moreover, territories inhabited by backward and underprivileged people offer fertile ground for unrest and international struggle. Poverty and frustration and political weakness are enemies of peace. Wherever such conditions exist among non-self-governing peoples who lack the power to control their own destinies or push progressively forward, the administering powers should be held accountable to the association of nations which are united to achieve a lasting peace. This principle of international accountability with respect to the welfare of dependent peoples is of comparatively recent development in the history of colonial government.

A. Concept of International Accountability for Non-Self-Governing Peoples

In the eighteenth and nineteenth centuries it was accepted by all that colonies existed for the benefit of the mother country. Colonial policies framed primarily for the profit of the ruling race are bound to bear evil fruitage for the ruling as well as for the subservient peoples; and we are

* United States Representative in the Trusteeship Council and President of the Council; Alternate United States Representative to the Second Session of the General Assembly. The opinions expressed in this paper are the personal and non-official views of the author. In the preparation of this paper the author is heavily indebted to Mr. James Frederick Green, Mr. William I. Cargo, and other officers of the Department of State.

¹ For a comprehensive bibliography, see Helen F. Conover, *comp.*, *Non-Self-Governing Areas with Special Emphasis on Mandates and Trusteeships: A Selected List of References*, Washington, Library of Congress, 1947, Vol. I, pp. 97-118. Citations in the present article are limited largely to official documents and to secondary works which have appeared since the publication of Miss Conover's bibliography. For a brief summary of the role of the United States in this field, together with selected references and documents, see *The United States and Non-Self-Governing Territories*, Department of State Publication 2812, April 5, 1947. See also articles and documentary material in *International Conciliation*, No. 435, November 1947.

paying today, and unhappily we will pay for many years to come, the price of old-style imperialism built upon exploitation.

At the end of the First World War came the explosive power of new ideas. President Woodrow Wilson, in his address of February 11, 1918, declared that "peoples and provinces are not to be bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in a game . . . but every territorial settlement involved in this war must be made in the interest and for the benefit of the population concerned. . . ." The mandates system written into the treaty of peace was an attempt to translate these progressive and liberalizing principles into practical reality in the case of the former German and Turkish colonies. The League of Nations Covenant contained the first binding international declaration that the well-being and development of peoples "not yet able to stand by themselves under the strenuous conditions of the modern world" form "a sacred trust of civilization."² The mandates system, although limited in its territorial application, thus gave clear and practical expression to the concept of international concern for dependent peoples.

Article 22 of the Covenant of the League of Nations laid down the general principles underlying the mandates system and provided for three categories of mandated territories. The so-called "A" mandates consisted of those former territories of the Turkish Empire which had reached a stage of development where they could be provisionally recognized as independent nations, "subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone." The "B" mandates consisted of those former German territories in Central Africa not yet ready for self-government where the Mandatory had to be responsible for the administration of the territory. Article 22 prescribed that the Mandatory must guarantee "freedom of conscience and religion, subject only to the maintenance of public law and morals," the prohibition of the slave trade, the arms traffic and the liquor traffic, and the prevention of fortifications and military training of the natives. It also prescribed equality of opportunity among all League Members for trade and commerce—the "Open Door" of the Mandates system.³ The "C" mandates consisted of South West Africa and former German islands in the Pacific. They were to be administered "under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above-mentioned in the interests of the indigenous population."⁴

These territories were assigned to specific mandatory powers by the Supreme Council of the Principal Allied Powers during 1919 and 1920.

² *Covenant of the League of Nations*, Article 22.

³ See Benjamin Gerig, *The Open Door and the Mandates System*, London, Allen and Unwin, 1930.

⁴ This latter clause has been interpreted in practice to exclude "C" mandates from the requirement of commercial equality of opportunity among all League Members.

The actual terms of mandate were approved by the Council of the League of Nations under its authority to define explicitly in each case "the degree of authority, control or administration to be exercised by the Mandatory."⁵

Under the mandates system an annual report on each territory was to be rendered to the League Council by the Mandatory; and a Permanent Mandates Commission, an expert body appointed by the Council, was constituted to receive and examine these annual reports.

B. Trusteeship System contrasted with Mandates System

The trusteeship system of the United Nations is historically, though not legally, the successor of the mandates system of the League. When those writing the Charter of the United Nations in San Francisco toward the close of the Second World War wrestled with this exceedingly complex problem of rule over dependent peoples, they naturally turned to the mandates system and the League's experience with the concept of international accountability.

Chapters XI, XII and XIII of the Charter of the United Nations were the result. Chapter XI sets forth a "Declaration Regarding Non-Self-Governing Territories," broad in its scope and far-reaching in its purposes, applicable to all non-self-governing peoples whether living in trust territories or elsewhere. The Members of the United Nations administering non-self-governing territories declare in unprecedented terms that they "recognize the principle that the interests of the inhabitants of these territories are paramount and accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants of these territories." Peace-loving peoples thereby acknowledged their own responsibilities with respect to non-self-governing peoples, including peoples under their own rule. The concept of international accountability for dependent peoples is thus extended so as to be made applicable in some degree within the borders of sovereign states.

Limitations of space unfortunately prevent a discussion in this paper of these striking provisions of Chapter XI.

The international trusteeship system set out in Chapters XII and XIII of the Charter goes considerably beyond the mandates system of the League. The trusteeship system is not limited to specified territories formerly belonging to the enemy but is open to any territory placed under the system by means of a trusteeship agreement.⁶ It contains no arbitrary and fixed

⁵ For a convenient compilation of the terms of the mandate instruments, see *Terms of League of Nations Mandates; republished by the United Nations*, UN doc. A/70, October 1946.

⁶ Article 77 of the Charter was written in terms sufficiently broad to make possible the placing under trusteeship of almost any kind of territory, since clause (c) specifies "territories voluntarily placed under the system by states responsible for their administration." Unofficial suggestions have been made from time to time that such

classification of territories, such as "A," "B," and "C" mandates, but lends itself to far greater flexibility in administration. It provides for several possible forms of administering authority—one or more states or the United Nations itself.' In contrast to the mandates system, which demilitarized the mandated territories, the trusteeship system provides

diverse territories as Trieste, the Ruhr, Palestine, and Antarctica should be placed under trusteeship. Recent petitions officially brought before the Trusteeship Council have included requests to extend international control, for instance, to the polar regions through an Arctic and an Antarctic Trusteeship. See UN docs. T/Pet/General 15 (4 Oct. 1947); T/Pet/General 16 (4 Oct. 1947); T/Pet/General 18 (9 Oct. 1947). Whatever may be the practical considerations involved, there would appear to be no legal barriers to the placing of these, or similar territories, under trusteeship.

Charter of the United Nations, Article 81. Administration by more than one state may be politically expedient but can raise issues of great difficulty. The problem of the Ewe people of Africa occupying British and French Togoland illustrates the unhappy complexities and enormous difficulties which arise when a single people find themselves divided by political frontiers and administered under differing cultural and colonial systems. In the case of Togoland it is two administering states operating in adjoining but separate trust territories. Nevertheless, since the basic principles and objectives of British colonial policy differ widely from those of French colonial policy and since the two cultures also differ radically, the underlying problem is much the same.

In the petition presented to the United Nations by the "All-Ewe Conference on behalf of the Ewe people of Togoland" dated August 9, 1947 (UN doc. T/Pet. 6/5, 26 August 1947) it is stated (p. 4):

The permanent Anglo-French frontier cuts indiscriminately through local states, villages and farms, thus separating sections of the people from their chiefs, relations and farms. In fact, one has the impression that Togoland was Germany's personal property—a territory taken from her by Britain and France in the Great War of 1914, and was shared as a booty pure and simple, with little or no consideration for the people who live in it. Eweland has since remained three territories, namely, Gold Coast Eweland, British Mandated Togoland and French Mandated Togoland under two fundamentally different administrations, namely, British and French administrations.

8. British policy which we may call the policy of adaptation, aims at educating colonial peoples for self-government, and for that reason, takes due account of indigenous culture and makes provisions for its development. On the other hand, French colonial policy, which we may call the policy of assimilation leads in an entirely different direction. The policy of assimilation aims at converting colonial peoples to full citizenship of France, and, for that reason, aims at imbuing the educated community with the best that French culture can give, rather than developing indigenous culture.

9. It is inimical to the true development of the people of Eweland who are united by the closest ties of kinship, language and culture to be divided between these two totally different administrations.

10. The division of Eweland between these two totally different administrations has therefore been felt by the Ewe people as unjust, and has led to a widespread dissatisfaction among both the literate and the illiterate.

The problem remains as yet unsolved. At its session in November 1947 the Trusteeship Council examined the Ewe petition; and in the hearing which followed the representatives of the United Kingdom and of France proposed an arrangement to eliminate customs barriers, to develop a common educational program and to take such other steps as can be worked out to ameliorate the present difficulties. The Trusteeship Council approved the plan as an initial proposal and intimated its intention to send

that each trust territory "shall play its part in the maintenance of international peace and security"⁸ and that all or part of a trust territory may be designated as a strategic area.⁹

Moreover, the Trusteeship Council is made a principal organ of the United Nations.¹⁰ Whereas the Permanent Mandates Commission was a subsidiary body of the League Council, experts appointed by the League "to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates,"¹¹ the Trusteeship Council, on the other hand, speaks authoritatively for the governments concerned. It is the governments themselves, acting through their chosen representatives sitting in the Trusteeship Council, which have in their hands the translation of the progressive Charter objectives into a concrete program of achievement.

One of the vital powers of the Trusteeship Council, which was never accorded to the Permanent Mandates Commission, is that of making periodic visits to trust territories.¹² Such visits can be of far-reaching effect. To the inhabitants of the trust territories a visiting mission gives concrete reality to the United Nations and its living concern in their welfare. To the administering authorities such visits are bound to quicken the sense of their responsibility and accountability to the United Nations. To the Trusteeship Council and especially to the members of the visiting missions, such first-hand contacts give tremendous vitality to their work, and bring home, as nothing else could, the realities and the possibilities of the Council's tasks.

The international trusteeship system affects not only the lives of some fifteen million people who live in the ten trust territories now under international control but also the peace and prosperity of the rest of mankind. It at once protects the inhabitants of trust territories and fosters their advancement towards self-government or independence. In a world characterized by discriminatory practices in trade and investment, the trusteeship system provides, with certain qualifications, equal treatment in the trust territories for all Members of the United Nations and their nationals. It offers,

a visiting Mission to Togoland at the next dry season—probably in January 1949—to give further study to the problem. UN doc. T/109, 18 December 1947, pp. 4-5.

The only trust territory thus far to be placed under multi-state administration is Nauru. In this case the three administering powers, the United Kingdom, Australia and New Zealand, possess the same basic culture, language, and colonial policy. In order to overcome difficulties and possible inefficiencies in administration, however, even in this case the actual administration of the territory has been delegated by the three powers to Australia alone.

⁸ *Charter of the United Nations*, Article 84.

⁹ Same, Article 82. See below, section 11 of Part II.

¹⁰ Same, Article 7.

¹¹ *Covenant of the League of Nations*, Article 22.

¹² *Charter of the United Nations*, Article 87(c).

moreover, a yardstick by which political, economic, and social advancement may be measured in the sixty-one non-self-governing territories, inhabited by 175 million people, which are outside the trusteeship system.¹³

II. OUTSTANDING LEGAL PROBLEMS ARISING OUT OF THE TRUSTEESHIP SYSTEM

Chapters XII and XIII of the Charter, relating to the trusteeship system, offer some of the most complex legal problems in the entire Charter. They involve unsolved questions of sovereignty and title, contentious territorial issues, problems concerned with the liquidation of the mandates system of the League of Nations, and difficult questions of interpretation of the Charter. Indeed, the Fourth (Trusteeship) Committee of the General Assembly devotes a large part of its time to debates over legal interpretations of these two Chapters of the Charter. It may be of value, therefore, to analyze the more notable legal problems which have arisen in connection with the origin and development of the trusteeship system.

1. *In trust territories where does sovereignty rest?*

One of the most perplexing legal questions arising out of the mandates system was that of the location of sovereignty of the territories under mandate. It has been the subject of extended treatment by writers on international law.¹⁴

The difficulty of assigning a precise locus of sovereignty for the mandated territories arose because of the unique character of the mandates system itself which departed widely from accustomed patterns. The mandates system involved an inter-relationship of (a) the Principal Allied and Associated Powers, which allocated the territories to be placed under mandate among the several Mandatory Powers;¹⁵ (b) the League of Nations, which exercised supervisory functions with respect to the mandates; and (c) the Mandatory Powers, which were the states actually administering the mandated territories. Since with respect to the mandated terri-

¹³ See *Yearbook of the United Nations*, 1946-47, 1947, pp. 11, 29-31, 38-39, 78-81, 184-208, 573-589. For United States participation in this work during the past two years, see *The United States and the United Nations: Report by the President to the Congress for the Year 1946*, Department of State Publication 2735, 1947; *The United States and the United Nations: Report by the President to the Congress for the Year 1947*, Department of State Publication 3024, 1948.

¹⁴ No attempt is here made to cite the extensive literature on this subject. However, for an illuminating discussion of the several theories of sovereignty over mandated territories, see Quincy Wright, *Mandates Under the League of Nations*, Chicago, 1932, pp. 319 ff.

¹⁵ The Supreme Council, acting for the Principal Allied and Associated Powers assigned mandates for the German colonies on May 7, 1919. The Turkish territories were allocated at San Remo on April 25, 1920. By this latter date the United States had withdrawn from official participation in the Supreme Council.

tories all three of these exercised certain powers usually attributed to sovereignty which had been formerly exercised by Germany and Turkey, the question of the location of sovereignty became unavoidably clouded after Germany had renounced sovereignty in the Treaty of Versailles and Turkey in the Treaty of Lausanne.

The question became the subject of a considerable division of opinion among writers on international law. It has never been decided by an International Court, by decision of the League of Nations, by vote of the United Nations, or by agreement among the interested states.

The four leading theories variously put forward with respect to the location of title to the mandated territories are as follows:

(1) *Title in the Principal Allied and Associated Powers.* Under Article 119 of the Treaty of Versailles, Germany renounced in favor of the Principal Allied and Associated Powers all her rights and titles over her overseas possessions. The view has therefore been advanced and strongly maintained by many that sovereignty at least over the "B" and "C" mandates must rest in the Principal Allied and Associated Powers. In the case of the former Turkish territories, which became the "A" mandates, a similar renunciation was contained in the Treaty of Sevres.¹⁶ This treaty did not come into effect. However, Article 16 of the Treaty of Lausanne gave effect to the allocation of these territories. By the time this treaty came into force, the "A" territories had already been allocated by the Principal Allied Powers. All in all, this theory of title resting in the Principal Allied and Associated Powers would seem to be the strongest case legally.¹⁷

(2) *Title in the League of Nations.* There is no treaty provision which specifically vests title to any of the mandated territories in the League of Nations. Those supporting this view, however, point to the clause in the preamble of the mandates which refers to the exercise of the mandate by the Mandatory Power "on behalf of the League of Nations." Others have based their arguments on the general responsibilities of the League of Nations with respect to the mandates system.

(3) *Title in the Mandatory Powers.* The one point in this highly controversial question of title on which there was almost unanimous agreement was that title does not reside in the Mandatory Powers. Article 22 of the League Covenant provided that territories of the "C" mandate category "could be best administered under the laws of the Mandatory as

¹⁶ Article 132, United Kingdom Treaty Series No. 11 (1920) [C.M.O. 964].

¹⁷ It is noteworthy that the Treaty of Peace with Italy, signed on February 10, 1947, contains the following stipulation (Article 40): "Italy hereby renounces all rights, titles and claims deriving from the mandate system or from any undertakings given in connection therewith, and all special rights of the Italian State in respect of any mandated territory."

integral portions of its territory" and thus afforded perhaps some slight color to the claim of title in the "C" Mandatory Powers. However, the clear view of the organs of the League of Nations concerned with Mandates—the Permanent Mandates Commission and the League Council—was that sovereignty, even as regards the "C" Mandates, did not reside with the Mandatory Powers.¹⁸ Japan, formerly one of the "C" Mandatory Powers, also declared in unequivocal terms that the Japanese Government "have never entertained the view that those islands (mandated to Japan) are Japanese territory."¹⁹

(4) *Title in the Inhabitants of the Mandated Territories.* This theory rests upon the general argument that sovereignty over any territory rests in the inhabitants of the territory. This conception rests upon a somewhat different meaning attributed to the word, sovereignty. The three preceding theories refer to sovereignty in the sense of a state or body having the right to dispose of the territory. The conception that sovereignty is located in the people of the mandated territories, on the other hand, refers perhaps more to the ultimate location of political authority over the territory. While such a theory might be plausibly applied to the "A" mandates, described by Article 22 of the Covenant as having "reached a stage of development where their existence as independent nations may be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone," it was clearly inapplicable to the "B" and "C" mandates.

When the trusteeship system was established and ten of the mandated territories placed under trusteeship, the question of exactly where sovereignty over the former mandated territories now rests received little clarification. In order to place the former mandated territories under a new system of international supervision the method adopted was chosen with a view to avoiding this controversial and trouble-making question. It was decided at the San Francisco Conference that territories should be placed under trusteeship by means of separate trusteeship agreements drawn up by the "states directly concerned" and approved by the General Assembly or the Security Council.²⁰ The phrase "states directly concerned"²¹ was perhaps a bow in the direction of sovereignty; but since the expression was capable of very diverse interpretations, no further light was thrown on the question of where sovereignty rests.

¹⁸ See Quincy Wright, *op. cit.*, pp. 121-324 ff., and 446-47 and the League documents there cited. For an analysis of particular interest see the report to the Permanent Mandates Commission by M. van Rees on "The System of State Lands in B and C Mandated Territories," Minutes of the Third Session of the Permanent Mandates Commission, pp. 216 ff.

¹⁹ Statement of Japanese Minister of Foreign Affairs to the Diet on February 22, 1934.

²⁰ Article 79 of the *Charter of the United Nations*.

²¹ Below, Section 7.

Thus far, of the three groups referred to in Article 77(1) of the Charter, only former mandated territories have been placed under the trusteeship system. The question of sovereignty over these territories remains fluid.

In spite of the unsolved question of exactly where sovereignty over mandated territories and over trust territories rests, there is general agreement with respect to certain aspects of the question. In the first place, there seems to be general concurrence with respect to the present trust territories, as there was with respect to mandated territories, that wherever sovereignty does rest it is not with the administering power. This view has been reinforced by statements of the United States, the United Kingdom and Australia as administering authorities of trust territories. Each of these has stated on separate occasions that it does not regard its administration of the trust territory as implying any claim of sovereignty.²²

In the second place, little now is heard of the theory that sovereignty over the mandated territories resided in the League of Nations in view of the fact that the League of Nations has disappeared without any direct transfer of its mandates responsibilities or sovereignty to others and certainly without any suggestion that the League was transferring title to the mandated territories to the United Nations.

Finally, it seems to be clear that the question of sovereignty over those trust territories which were formerly mandates is of lessening practical significance. The question of exactly where sovereignty over a trust territory rests is being reduced to one of sterility. Irrespective of where sovereignty may rest, a practical method has now been worked out and approved by the General Assembly for the placing of former mandated territories under trusteeship; and trusteeship may be lawfully terminated

²² In an explanatory comment on the Draft Trusteeship Agreement for the former Japanese Mandated Islands, the United States Government, in discussing the phrase "integral part" which appeared in the original draft of Article 3 of the proposed trusteeship agreement, declared that this did not "imply sovereignty over the territory." See Department of State Publication 2784, p. 5.

In the discussions in the General Assembly preceding the approval of the first trusteeship agreements, the Delegate for the United Kingdom declared that the "retention of the words 'as an integral part' in the Trusteeship Agreement for Togoland and the Cameroons under British administration did not involve administration as an integral part of the United Kingdom itself and did not imply British sovereignty in these rights." Report of the Fourth Committee on Trusteeship Agreements, UN doc. A/258, December 12, 1946, p. 6.

The Australian representative in the Trusteeship Subcommittee of Committee 4 at the Second Part of the First Session of the General Assembly stated that sovereignty over New Guinea was not claimed by Australia. UN doc. A/C.4/Sub. 1/19, November 21, 1946, p. 5. The Belgian representative stated to the same body that in using the phrase "as an integral part" it was not the intention of the mandatory powers to imply a decision on the "incidence of sovereignty." The French representative supported these remarks. UN doc. A/C.4/Sub. 1/30, November 23, 1946, p. 3.

under the Charter by the grant of self-government or independence for the trust territory and its inhabitants. This is not to suggest that legal difficulties concerning title to mandated and trust territories do not still remain. But as long as the trusteeship system remains in operation they do not present insuperable or even baffling obstacles to progress.

2. Is the placing of mandated territories under the trusteeship system optional or obligatory?

Controversy has twice arisen in the General Assembly as to whether or not the Charter provisions create a legal obligation on the part of mandatory states to place former mandated territories under trusteeship. During the debates over South West Africa, in both 1946 and 1947, a very vocal bloc of powers insisted with vigor that the Charter was based upon the assumption that all mandated territories should be placed under trusteeship and that all mandatory states are legally bound to do so.²³ An opposing group of powers, including the United States, maintained that whatever the moral obligations might be, there was clearly no binding legal obligation on the part of the Union of South Africa to place South West Africa under trusteeship.

From a strictly legal point of view, the Charter provisions seem to leave little room for doubt. There is no Charter provision explicitly requiring a mandatory state to take such action; and Article 77 seems to point in quite the opposite direction. Article 77 states: "The trusteeship system shall apply to such territories . . . as may be placed thereunder by means of trusteeship agreements"; and, again: "It will be a matter for subsequent agreement as to which territories . . . will be brought under the trusteeship system and upon what terms." These are not the words of a binding legal obligation.²⁴

²³ In support of this contention they argued that Article 77(1) lists mandated territories as one category to which the trusteeship system "shall apply," and that Article 80(2) states that Article 80(1) "shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system. . . ." It was further argued that if there were no binding obligation to place the mandated territories under trusteeship, and if they were consequently not placed under trusteeship, the Trusteeship Council, a principal organ of the United Nations, could not have been brought into being—a contingency which could not have been contemplated by the drafters of the Charter. See UN docs. A/250, Dec. 11, 1946; A/250/Add. 1/Rev. 1, Dec. 12, 1946; A/250/Add. 2/ Dec. 12, 1946; A/P.V./104, Nov. 1, 1947; A/P.V./105, Nov. 1, 1947.

²⁴ In stating the position of the United States during the debate in the General Assembly on November 1, 1947, the author said: "The United States Government played an active role, both at the Crimea Conference and at the San Francisco Conference, in the formulation of the basic principles of the trusteeship system. It was always of the view that nothing in the Charter could or should compel the placing of any territory under the trusteeship system. At San Francisco, the United States Delegation was particularly concerned as members of the Assembly will remember,

In questions of international concern such as this, involving vital interests and fundamental issues of policy among sovereign states, the answer must be sought in the actual decisions reached by the powers involved, sometimes crystallizing into established practice, quite as often as in carefully considered determinations of judicial tribunals. In the South West African case the conflict of opinion was decided by vote in the Assembly in both 1946 and 1947. In both years resolutions were proposed reciting that the Union of South Africa was legally bound under the Charter to place South West Africa under trusteeship, and these were in each case voted down.²⁵ In both Assemblies, on the other hand, resolutions were passed recommending that the mandated territory of South West Africa be placed under the international trusteeship system and *inviting* the Union Government to propose for the consideration of the General Assembly a trusteeship agreement for the territory.²⁶

over the disposition of the former Japanese Mandated Islands, and was constitutionally unable in advance to commit the Congress of the United States to the conclusion of a trusteeship agreement for those islands. The United States Delegation therefore necessarily took the position that the conclusion of trusteeship agreements was to be a voluntary, and not a compulsory, process. To this end, it gave the most careful consideration to the wording of Article 77 of the Charter. The question is now an academic one in so far as the former Japanese Mandated Islands are concerned, but it would not be fair for the United States to alter its interpretation of Article 77 merely because its own interests are no longer involved." See UN doc. A/P.V./104, pp. 57-61.

²⁵ The Resolution recommended to the General Assembly by the Fourth Committee in 1947 recited that "it is the clear intention of Chapter XII of the Charter of the United Nations that all territories previously held under mandate, until granted self-government or independence, shall be brought under the International Trusteeship System." UN doc. A/422, October 27, 1947. The General Assembly amended the Resolution as proposed by striking out this particular provision.

²⁶ As phrased in the General Assembly resolution passed on November 1, 1947, the General Assembly "firmly maintains its recommendation that South West Africa be placed under the Trusteeship System," and "urges the Government of the Union of South Africa to propose for the consideration of the General Assembly a Trusteeship agreement for the territory of South West Africa and expresses the hope that the Union Government may find it possible to do so in time to enable the General Assembly to consider the agreement at its third session." For 1946 resolution see UN doc. A/64/Add.1, Res. 65(1), January 31, 1947; for 1947 resolution see UN doc. A/429, October 29, 1947, and UN doc. T/52, Res. 141 (11), November 7, 1947.

The South West African controversy raised another thorny legal problem which remains still unsettled. In spite of the 1946 General Assembly resolution, the South African Union failed to place South West Africa under trusteeship. During the Assembly and Fourth Committee debates in 1947 the question arose whether, quite apart from the controversy over the interpretation of the Charter language, the South African Union was under an obligation by virtue of the previous Assembly vote to place South West Africa under trusteeship. In other words, does the affirmative vote of the General Assembly embodying a "recommendation" create a definite obligation, legal or otherwise, and, if so, of exactly what character is the obligation? This is a problem of enormous consequence, as yet unsolved.

In the debate in the Security Council on Palestine in February 1948, the United

3. *To what extent are the underlying principles of the international trusteeship system applicable to all non-self-governing peoples?*

Prior to the San Francisco Conference, a number of unofficial proposals had been made for the placing of all non-self-governing territories under some form of international supervision.²⁷ The San Francisco Conference had before it an Australian proposal that trusteeship principles should be

States representative, Mr. Austin, stating the views of the United States, said: "The recommendations of the General Assembly have great moral force which applies to all Members [of the United Nations] regardless of the views they hold or the votes which they may have cast on any particular recommendation. Similarly, the Security Council, although not bound under the Charter to accept and carry out General Assembly recommendations, is nevertheless expected to give great weight to them." U. S. Mission to the United Nations, Press Release 394, February 24, 1948, p. 1.

In the recent session of the General Assembly, controversy arose over a draft resolution put forward by the Delegation of India providing that "The General Assembly hopes that Members of the United Nations responsible for the administration of Non-Self-Governing Territories will propose Trusteeship Agreements under Article 77, 1, c of the Charter of the United Nations for all or some of such territories as are not ready for self-government." UN doc. A/423, October 27, 1947. The preamble to this resolution declared that it was "the clear intention" of Chapter XII that the territories referred to in Article 77(1)(c) should be placed under trusteeship and that the trusteeship system offered the "surest and quickest" method for attaining independence or self-government. Opposition to the resolution, which was ultimately defeated, was based on the grounds that no such "clear intention" was expressed in the Charter; that there is as yet no proof that trusteeship is the "surest and quickest" path to independence, because six countries containing almost 500 million people have attained, or virtually attained, independence outside the trusteeship system since the Charter was signed; and that it would be illogical for the General Assembly, having dealt with mandated territories, to ignore the detached territories referred to in clause (b) of Article 77(1) and pass to non-self-governing territories in clause (c). For texts of statements by Mr. John Foster Dulles, United States representative, see U. S. Mission to the United Nations, Press Release 264, October 13, 1947, and UN doc. A/P.V./106, November 1, 1947, pp. 46-66.

²⁷ The Fabian Colonial Bureau, of which Mr. Arthur Creech Jones, now Secretary of State for the Colonies, was, at the time, Chairman, published a pamphlet recommending close international supervision of all dependent territories: *Fabian Colonial Bureau, International Action and the Colonies: Report of a Committee of the Fabian Colonial Bureau* (London, Fabian Publications Ltd., 1943). See also address by Mr. Arthur Creech Jones before the Peace Aims Conference of the National Peace Council, Oxford, 1942, reprinted in *Freedom for Colonial Peoples* (Peace Aims Pamphlet No. 11, London, National Peace Council n.d.). For related British views, consult *The Colonies: The Labour Party's Post-War Policy for the African and Pacific Colonies* (London, 1943); and *An International Colonial Convention* (London, Anti-Slavery and Aborigines Protection Society, 1943). Mr. Sumner Welles, formerly Under Secretary of State, proposed a "Superior Agency of an International Trusteeship," under whose authority would be created regional councils. In cases where dependent peoples at the close of the war would no longer be under the control of an administering power, or where the present colonial power had proved unworthy or incompetent, the International Trusteeship would undertake the administration through its regional councils. Upon the

made applicable to territories "declared either by the voluntary action of the member administering the territory or by the General Assembly, after consideration of the recommendations of a conference or conferences, especially convened by the United Nations, of members responsible for the administration of dependent territories."²⁸ The Conference decided, however, to adhere to the Crimea formula²⁹ and to limit the territorial scope of the trusteeship system to the three categories of territories which might be placed thereunder by means of agreements subsequently concluded.³⁰

In spite of the very definite and positive decision reached at San Francisco to make the trusteeship system applicable only to territories voluntarily placed thereunder by means of trusteeship agreements persistent efforts have been continued on the part of certain non-administering powers to extend the underlying principles of the trusteeship system to all non-self-governing territories, i.e., in effect to blur the sharp distinction made in the Charter between Chapter XI, applicable to all non-self-governing peoples, and Chapters XII and XIII, applicable exclusively to trust territories. Chapter XIII confers upon the Trusteeship Council the right with respect to trust territories to make periodic visits, to examine petitions and to submit to the administering authorities questionnaires. No such inquisitorial power has been conferred by the Charter or agreed to by the administering powers with respect to non-trust territories, which in most cases are part of the domain of fully sovereign states. The distinction between the two is of fundamental importance; and any attempt to violate the clear Charter provisions, for instance, by insisting upon the rendering to the United Nations of political information or the making of visits to or examining petitions from non-trust territories will serve only

advice of the International Trusteeship, the International Organization "would determine broad policies for the welfare of dependent peoples, and would decide when they are fitted to exercise partial, or complete autonomy." *The Time for Decision* (New York, 1944), p. 384.

²⁸ *Documents of the United Nations Conference on International Organization, San Francisco, 1945, Vol. X, p. 644.*

²⁹ At the Crimea Conference it was agreed that the five states which would have permanent seats on the Security Council should consult each other on the question of territorial trusteeship prior to the United Nations Conference. This agreement was reached on the understanding that territorial trusteeship would apply only to: (a) existing mandates of the League of Nations; (b) territories to be detached from enemy states after the war; and (c) any other territory that might voluntarily be placed under trusteeship. It was further understood that no discussion of actual territories would be undertaken at the United Nations Conference or in the preliminary consultations, and that it would be a matter for subsequent agreement as to which territories within the three categories would be placed under trusteeship. *Protocol of the proceedings of the Crimea Conference*. (February 1945), Department of State Press Release 239, March 24, 1947.

³⁰ *Charter of the United Nations, Article 77.*

to weaken the Charter and impair its force. Such attempts must result in frustration, in stirring up resentment on the part of the sovereign administering states and in ultimate injury to the welfare of non-self-governing peoples.

Nevertheless, in the General Assembly's Ad Hoc Committee on the Transmission of Information under Article 73(e), meeting in September 1947, repeated efforts were made by a group of non-administering states to go beyond the clear Charter provisions in the direction of establishing international supervision over the administration of non-self-governing territories other than trust territories. Attempts were made to require all states to furnish "political" information concerning non-self-governing territories in addition to the information on "economic, social and educational conditions" required under Article 73(e) of the Charter. Suggestions were put forward even to authorize the United Nations to make annual visits to, and to examine petitions from, these territories.³¹ A similar thread runs throughout the debates in the Fourth Committee of the Second Assembly. In the Fourth Committee those pursuing this effort, after a struggle, obtained a vote requiring the furnishing under Article 73(e) of "political" information covering non-trust territories. The General Assembly, however, by reversing this vote made it clear that the powers granted by Chapters XII and XIII of the Charter could not be extended to non-trust territories.³²

³¹ Ad Hoc Committee on the Transmission of Information under Article 73(e) of the Charter, Report for Submission to the General Assembly. UN doc. A/AC.9/W.34/Rev. 1, September 15, 1947, p. 5.

³² During the debate in the Fourth Committee of the General Assembly (1947), the author, as representative of the United States, stated the American position as follows:

Several of those who have spoken here, it has seemed to me, lost sight of the very clear and fundamental distinction which was drawn at San Francisco between Chapter XI of the Charter, on the one hand, and Chapters XII and XIII, on the other. It seems to my Delegation that if we would truly and actually promote the political and economic and social and educational advancement of the non-self-governing peoples of the world we must keep always in mind this wise and sharp distinction made at San Francisco in our Charter.

This distinction is fundamental. It was realized then, and it remains true now, that in many non-self-governing territories sovereignty or jurisdiction vests in the administering states; and nothing was written into the Charter to change this fundamental fact. On the other hand, there are other non-self-governing territories—trust territories—where supervision lies in the hands of the United Nations; and in such territories the United Nations can and should hold the administering power to strict accountability. Chapter XI of the Charter dealt with the former; Chapters XII and XIII, with the latter. . . .

It seems to my Delegation of fundamental importance that this sharp differentiation made in the Charter between territories and peoples under the sovereignty or jurisdiction of an independent state and those which are not should be maintained. Chapters XII and XIII materially alter the status of the non-self-governing territories coming within their scope. Chapter XI does not. No effort should be made to blur this distinction.

4. *What are the respective functions of the Trusteeship Council and of the administering powers with regard to the direction of policies controlling trust territories?*

In the government and administration of a non-strategic trust territory two control agencies are primarily concerned—the administering power and the Trusteeship Council. Exactly what are the respective powers and functions of each relative to the other?

The Charter itself and the various trusteeship agreements leave the question practically unanswered. The precise answer must be gradually evolved from current situations and from the give and take of day to day experience.

So far as practical detailed administration is concerned, it is readily apparent and universally agreed that this must fall within the scope of the administering power. The Trusteeship Council is by its structure and nature essentially a deliberative rather than an administrative body. It does not sit in continuous session. It lacks experience in carrying heavy police or financial responsibilities.

On the other hand, when it comes to the question of overall policy which gives the direction to current administration, it is the Trusteeship Council which carries the ultimate responsibility. If, for instance, the administering power should in its administration depart from or violate the basic objectives of the trusteeship system as set forth in Article 76, it would unquestionably be the duty of the Trusteeship Council to make the fact clear and to bring all of its resources into play to secure a reversal of such policy. The administering power does not possess unlimited sovereign rights over the trust territory. The power of supervision over trust territories is given by the Charter to the Assembly and the Trusteeship Council.

At the same time, it is to be remembered that the Trusteeship Council has no power to compel. It has no force at its command. In the exercise of its supervisory functions it secures compliance with its recommendations only through the force of persuasion and of public opinion.

But these can be utilized as forces of great power. Instances are not lacking of the effectiveness of the Council's recommendations. When the Council sent a visiting mission in the summer of 1947 to the trust territory of Western Samoa in response to a petition for self-government, the mission, at the end of six weeks' intensive study on the spot, made concrete recommendations.³³ These include the taking of immediate steps to give Samoans a substantially greater measure of self-government than at present enjoyed, the setting up of a Government of Western Samoa, the institution of a legislative Assembly containing an absolute majority of Samoans, and other far-reaching reforms. The interesting fact is that following the

³³ *Report of Western Samoa Mission*. UN doc. T/46, September 24, 1947, and T/46 Add. 1, September 25, 1947 (Annexes).

mission's investigations the New Zealand Government laid before the Parliament in Wellington a new plan for the administration of Western Samoa; and this new plan embodies substantially every one of the mission's recommendations.³⁴

The Trusteeship Council has no power to oust the administering power, even should there be a flagrant case of maladministration.³⁵ The Charter is framed upon the basic principle that non-self-governing areas are placed under trusteeship only by the voluntary act of the administering power. The former mandatory powers were thus in a position themselves to determine the nature and character of the trusteeship agreement which each was willing to propose to the United Nations and to undertake to administer. This gives to the administering powers a practical independence in the exercise of their administration which can be curtailed only through persuasion, tactful influence and the force of opinion. These latter, however, can be of very great effect.

In a hundred different ways the constant interplay between purely administrative functions and supervisory ones is shaping an evolving policy. For instance, in 1947, when the Trusteeship Council was considering more than a score of petitions from German and Italian residents of Tanganyika, each for the right to remain in or reënter the trust territory, the Trusteeship Council concerned itself, not with the individual situation of each petitioner but with the policy laid down and being followed by the administering authority with regard to the deportation and exclusion from Tanganyika of former German Nazis or Nazi sympathizers. The representatives of the United Kingdom, appearing before the Trusteeship Council and being questioned by the Council, stated the policy being followed and gave various assurances as to the carrying out of the policy.³⁶ The Trusteeship Council in its resolution expressed its general approval of the

³⁴ UN doc. T/62, November 21, 1947. The New Zealand bill embodying this new plan has now become law.

³⁵ The question of whether a Mandatory Power could be removed was a much-debated point under the Mandates system, particularly in connection with the withdrawal of Japan from the League of Nations and Japan's apparent violation of the military clauses of the mandate. See also Quincy Wright, *Mandates Under the League of Nations*, pp. 520-521.

³⁶ See UN doc. T/43 (11 June 1947), *Resolutions adopted by the Trusteeship Council during its first Session*. For example: "The Trusteeship Council noted the United Kingdom assurance that no German is to be repatriated solely on account of his nationality. Those who are to be repatriated on grounds of enemy activities or sympathies are: persons associated with enemy espionage, sabotage or similar activities; persons who participated in anti-Allied or pro-Nazi activities, such as propaganda or the organization of local German nationalistic associations; and persons whose activities served to maintain German commercial or national interests or influence, whether or not such persons worked directly against Allied interests. All these twenty-four persons had mortgaged their properties in Tanganyika to a company which was, like the USAGARA Company, primarily a Nazi organization" (p. 5).

policy. This general approval was reaffirmed in the Second Session during its discussion of an additional group of petitions bearing on the same subject.³⁷ While the Council refused to undertake to make detailed decisions with respect to the administration of the policy, it did of course consider charges made by individuals of the failure to carry out the declared policy in specific cases.

It is clear that no precise fixed line of demarcation can be drawn between the respective functions of the Trusteeship Council on the one hand and the administering powers on the other. The lack of any such precise line could lead to endless irritation, frustration, and possible shipwreck. The fact is it has not. With tact and understanding on both sides, the work of the Trusteeship Council thus far has been notable for its harmony and resulting achievement. As long as this continues, there will be real progress. If it should ever disappear, the Trusteeship Council will be able only to mark time.

5. *What is the meaning of the objective of "self-government or independence"?*

Article 76 of the Charter³⁸ explicitly sets forth four basic objectives of the trusteeship system. These constitute a daring venture. Nothing so progressive and far-reaching within the realm of government over dependent peoples was ever before attempted.

The second of these objectives—the promotion of political, economic, social, and educational advancement of the inhabitants and their progressive development towards self-government or independence—embodies the central conception of the mandates system, but goes beyond it. The Covenant (Article 22) confined the mandates objective to the "well-being and development" of the inhabitants. To this the framers of the Charter at San Francisco boldly added "progressive development towards self-government or independence." The ideal of human freedom was written into a binding international agreement.

³⁷ See UN doc. T/P.V./32, December 1, 1947, and T/P.V./41, December 11, 1947.

³⁸ Article 76 reads as follows:

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

- a. to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
- d. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

The wording of this additional objective marks a compromise. Some delegations at San Francisco, particularly non-administering states, conceived the solution of problems of non-self-governing peoples in terms of rapid or even immediate attainment of full independence. In their minds the problem of dependent peoples can be at once solved by the grant of independence. Another group, composed largely of those states having long experience in governing and working with dependent peoples, felt equally strongly that the real problems go far deeper than mere political status, that genuine solutions can come only through slow processes of education and training in the complex tasks of government and administration. In their eyes the grant of independence to peoples who lack the trained administrators or popular education necessary for orderly processes of government or who perhaps lack the economic or financial resources necessary for independent statehood, is but to create and multiply international problems rather than to solve them.³⁹

(Between these two groups conflict raged, the former demanding that the objective of the trusteeship system should be the speedy grant of outright independence, the latter, including the United States, that the objective should be the gradual and orderly evolution toward whatever form of independence or self-government the inhabitants of a particular territory were capable and desirous of attaining.⁴⁰ Agreement was finally found by a formula phrased in the alternative—"progressive development towards self-government or independence, as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned."⁴¹

³⁹ See in this connection the interesting and able speech delivered by the United Kingdom's representative in the discussion on this subject in the Fourth Committee at the Second Session of the General Assembly. As there suggested, the ultimate welfare of dependent peoples can in some cases be best promoted by immediate independence, in others by self-government in a larger grouping of territories and in still others by remaining under the wing of a colonial power and drawing upon it for educational facilities, technicians, and defense. It is a naive misunderstanding to suppose that "sovereign status is a sovereign remedy for all ills." UN doc. A/C.4/SR. 36, October 4, 1947, pp. 2-5.

⁴⁰ See Ralph J. Bunche, "Trusteeship and Non-Self-Governing Territories in the Charter of the United Nations," *Department of State Bulletin*, December 30, 1945, p. 1039; and *The United States and Non-Self-Governing Territories*, work cited, p. 11.

⁴¹ It is interesting that while each of the ten trusteeship agreements specifies in some detail the means for promoting political advancement, none specifically amplifies the words "self-government or independence." Efforts were made during the debates of the General Assembly to obtain such amplification but were rejected by the mandatory powers. A similar effort was made in the Security Council in the discussion of the trusteeship agreement for the Pacific Islands to modify the United States proposal which mentioned only "self-government." The United States representative, upon the request of the Soviet representative, agreed to the addition of the clause which follows in Article 76(b) of the Charter, but declared that "the United States feels that it must record its opposition not to the principle of independence, to which no people could be

The view of the United States was set forth in the discussion in the Fourth Committee during the Second Session of the General Assembly: " 'Self-government' may take the form of independence; it may take the form of local autonomy within a larger association of some kind; it may take the form of assimilation to a sovereign state, provided that the people of the territory concerned have attained a degree of political autonomy and reached a stage of political development which will enable them to make a free and considered choice.

"Thus, it becomes evident that Chapter XI of the Charter provides for the steady progress of the peoples of non-self-governing territories toward a variety of goals encompassed in the phrase 'self-government'. It is equally evident, however, that immediate independence for all non-self-governing territories would not necessarily benefit those territories; in fact, it might retard their development, injure their peoples, and create confusion and chaos in many parts of the world.

"Indeed, it must be admitted that non-self-governing territories are not, in every case, in greater need of attention than some of the peoples of sovereign, self-governing nations. In fact, there are non-self-governing peoples who enjoy greater powers of self-government and greater protection for their individual rights than are enjoyed by some peoples within independent states."⁴²

6. *How is "equal treatment" in trust territories "for all Members of the United Nations and their nationals" to be defined?*

The fourth of the basic objectives of the trusteeship system set forth in Article 76 is "to ensure equal treatment in social, economic and commercial matters for all Members of the United Nations and their nationals." This embodies a deep-rooted American ideal—the elimination of discriminatory practices in economic and commercial relations, expressed at various times as the "Open Door" policy. It is here made an international obligation making for peace, binding in all non-strategic trust territories.

The contentious issue of what constitutes "equal treatment" was perhaps one of the most difficult problems at the San Francisco Conference.⁴³ It will be recalled that equal treatment was prescribed in the Covenant of the League for the "A" and "B" mandates, but not for the "C"

more consecrated than the people of the United States, but to the thought that it could possibly be achieved within any foreseeable future in this case." See UN doc. S/P.V./116, March 7, 1947, p. 47.

⁴² Statement by the author, representing the United States in the Fourth Committee, U. S. Mission Press Release No. 244, October 2, 1947, pp. 1-2.

⁴³ See *The Question of Equal Treatment in Economic and Commercial Matters in Trust Territories (Article 76 d)*; *Memorandum Prepared by the Secretariat*, UN doc. A/O.4/38, November 3, 1946.

mandates.⁴⁴ The United States Delegation at San Francisco introduced a proposal requiring non-discriminatory treatment in all trust territories.⁴⁵ The mandatory powers which administered "C" mandates contended, however, that any provision in the Charter which would require equal treatment in "C" mandates placed under trusteeship would have the effect of altering the terms of the mandate. Partly as a result of this contention, Article 80(1) was inserted in the Charter providing that, except as might be agreed upon in individual trusteeship agreements and until such agreements had been concluded, nothing in Chapter XII should be construed "to alter in any way the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations might respectively be parties."

Article 76(d), as finally adopted, represented a compromise between these opposing points of view. Equal treatment was applied to all non-strategic trust territories but "without prejudice to the attainment of the foregoing objectives"—that is, peace and security, the advancement of the inhabitants, and human rights. The effect of Article 76(d) is to strengthen the requirement of equal treatment with respect to the former "C" mandates, where no such requirement previously existed, but to weaken it with respect to the former "A" and "B" mandates, where it was unqualified.

Exactly how "equal treatment" is to be defined is a problem still unsolved.⁴⁶

The question also remains open whether in strategic trust territories the Charter requires equality of commercial treatment for all Members of the United Nations. Article 83, paragraph 2, of the Charter provides that "the basic objectives set forth in Article 76 shall be applicable to the people of each strategic area." It has been argued that these words, confining the applicability to *the people* of each strategic area, make the basic objectives set forth in paragraph (d) of Article 76 inapplicable to the "Members of the United Nations and their nationals." As yet no determination of the matter has been made either by vote in the General Assembly or by judicial decision.

The position of the United States, the administering authority of the only existing strategic trust territory, was set forth before the Security Council, meeting on April 2, 1947 to consider the draft trusteeship agreement for the Trust Territory of the Pacific Islands. Ambassador Austin, the American representative in the Security Council, in discussing the Charter provision contained in Article 76(d), said: "Now I wish to state

⁴⁴ See above, p. 1-3.

⁴⁵ *Documents of the United Nations Conference on International Organisation, San Francisco, 1945*, Vol. X, p. 644.

⁴⁶ Students of this problem may find the phosphate concessions in Nauru and the diamond concessions in Tanganyika worthy of examination.

as a matter of record that the United States Government has no intention, through this clause or any other clause, of taking advantage, for its own benefit and to the detriment of the welfare of the inhabitants, of the meager and almost non-existent resources and commercial opportunities that exist in the scattered and barren islands."⁴⁷

7. *How are "states directly concerned" to be determined?*

It was envisaged in Article 79 of the Charter that trusteeship agreements would be concluded in two steps—agreement by the "states directly concerned" and approval by the General Assembly or, in the case of strategic areas, by the Security Council.⁴⁸ It was thought that the agreement would take the form of a formal instrument, probably a treaty, entered into by the "states directly concerned" and thereafter jointly submitted to the appropriate United Nations organ.

The phrase "states directly concerned" made its first appearance in the working paper which the United States Delegation submitted at the San Francisco Conference.⁴⁹ It was generally considered that it would be a matter for subsequent determination as to which states were directly concerned in any particular territory.

The conception was based upon the fact that no territory could be placed under the trusteeship system without the consent of the states which were directly concerned—through sovereignty, administration, or other rights in such territory. In the case of the mandated territories, as has already been pointed out, it has always been a matter of dispute as to where sovereignty resided—in the Principal Allied and Associated Powers, in the League of Nations, in the mandatory power, or in the people of the territory.⁵⁰ With respect to territories detached from enemy states, the signatories of the peace treaties would presumably be directly concerned. With respect to other territories, the states directly concerned would be those responsible for their administration. In any event, the "states directly concerned" would themselves make this determination, after which the General Assembly or the Security Council, as the case might be, would be entitled to pass upon the determination.

At the London meeting of the General Assembly in 1946 efforts were made to define the phrase "states directly concerned" but no agreement

⁴⁷ UN doc. S/P.V./124, April 2, 1947, pp. 103-105. A similar statement was made at the time the draft trusteeship agreement was placed before the Security Council. See *Draft Trusteeship Agreement for the Japanese Mandated Islands*, State Department Publication 2784 (1947), p. 8.

⁴⁸ See *Some Points of Procedure with Regard to Consideration of Trusteeship Agreements by the General Assembly*, UN doc. A/87, September 25, 1946.

⁴⁹ *Documents of the United Nations Conference on International Organization, San Francisco, 1945*, Vol. X, p. 646.

⁵⁰ Above, section 1.

was reached.⁵¹ Later in the year, at the New York meeting of the General Assembly, the United States representative, Mr. John Foster Dulles, declared that, owing to the obvious difficulty of defining this phrase and to the danger that controversy over the matter might lead to delay in establishing the trusteeship system, it would be preferable to assume, for practical purposes, that the mandatory power was the state directly concerned. He added that the United States, which might well claim to be a state directly concerned in all mandated territories, would be willing to waive its claims with respect to the eight trusteeship agreements under consideration by the Assembly if all other Members would do the same.⁵²

After prolonged controversy, the General Assembly, on December 13, 1946, approved the eight trusteeship agreements by overwhelming majorities, without attempting to determine which were the states directly concerned.⁵³ It was contended by certain delegations, however, that the conclusion of these trusteeship agreements was contrary to Article 79 of the Charter and that, hence, the Trusteeship Council was being illegally organized. At the time of the election of members of the Trusteeship Council, the President of the General Assembly, in response to a challenge by the Byelorussian Delegate, declared that the General Assembly had adopted the trusteeship agreements by an overwhelming majority and that elections to the Trusteeship Council would therefore be perfectly regular.⁵⁴

The question of the interpretation of Article 79 of the Charter arose a second time when the Security Council was considering the United States trusteeship agreement for the former Japanese Mandated Islands. Here again the problem was settled without a determination of what states were the ones "directly concerned." In proposing the agreement to the Security Council the United States representatives stated that "The United States believes it has fulfilled the requirements of Article 79 of the Charter, first by transmitting copies of a draft trusteeship agreement for the former Japanese Mandated Islands to all Members of the United Nations, which, in the view of the Government of the United States, may have special interests in these islands, and now by formally submitting the draft agreement to the Security Council for its approval."⁵⁵

⁵¹ *The United States and the United Nations: Report of the United States Delegation to the First Part of the First Session of the General Assembly of the United Nations*, Department of State Publication 2484, 1946.

⁵² *U. S. Position on Establishment of Trusteeship System*; Statement by Member of the U. S. Delegation, *The Department of State Bulletin*, December 1, 1946, pp. 991-992.

⁵³ For a summary of the General Assembly's debates on the "states directly concerned" and other trusteeship topics, see Elizabeth H. Armstrong and William I. Cargo, *The Inauguration of the Trusteeship System of the United Nations*, *The Department of State Bulletin*, March 23, 1947, pp. 511-521.

⁵⁴ See Official Records of the Second Part of the First Session, the General Assembly (63d Plenary Meeting, Dec. 14, 1946), p. 1321.

⁵⁵ *Draft Trusteeship Agreement for the Japanese Mandated Islands*, Department of State Publication No. 2784, p. 19.

During subsequent discussions of the proposed agreement by the Security Council, however, two decisions were made which bear upon the interpretation of Article 79. First, after receipt of requests from the Indian and New Zealand governments that they be given an opportunity to present their views on the agreement, the Security Council decided to give a hearing to those two governments, as well as to any members of the Far Eastern Commission which might apply. As a result of this decision representatives of Canada, India, the Netherlands, New Zealand, and the Republic of the Philippines were present at subsequent discussions on the trusteeship agreement.

The second decision bearing upon the question came during consideration of Article 15⁵⁶ of the trusteeship agreement. It was pointed out by one member of the Security Council that no consideration had been given to "states directly concerned" as stipulated in Article 79, and that some attempt should be made to define this phrase and to determine who those states might be. A proposal to adjourn the meeting in order to study this matter and prepare a full discussion on the point was defeated.⁵⁷

At the recent session of the General Assembly, when the report of the Trusteeship Council was under consideration in the Fourth Committee, a delegate protested that since the trusteeship agreements were themselves invalid the Trusteeship Council had therefore been brought illegally into existence.⁵⁸ The Chairman of the Committee ruled that any further remarks challenging the legality of the Trusteeship Council would be ruled out of order as irrelevant.⁵⁹

The approval of the draft trusteeship agreement for Nauru was objected to somewhat later in the session by the Soviet Delegation on the same ground, the claim being made that, *inter alia*, Article 79 of the Charter had been violated.⁶⁰ This objection was voted down and the trusteeship agreement for Nauru was approved.

8. What interpretation is to be placed upon the words "as an integral part"?

Under the mandates provision of the Covenant of the League of Nations "C" mandates were to be administered under the laws of the Mandatory

⁵⁶ "The terms of the present agreement shall not be altered, amended or terminated without the consent of the administering authority."

⁵⁷ For a full discussion of this proposal see S/P.V./124, April 2, 1947.

⁵⁸ In the Fourth Committee of the Second General Assembly, the author, as President of the Trusteeship Council, in reply to the charge of illegality, referred to the previous actions of the General Assembly and the Security Council as justifying the legality of the Council, and concluded with the statement that "quite apart from the fact that there is no possible legal justification for questioning its validity, the time is now past when any justifiable attack can be made upon the Council's constitutional existence." United States Mission to the United Nations. Press Release No. 238, September 29, 1947. See also UN doc. A/C.4/SR. 34, September 29, 1947, pp. 1-2.

⁵⁹ Same, p. 1.

⁶⁰ UN doc. A/C.4/SC.1/SR. 30, October 6, 1947, pp. 1-4.

"as integral portions of its territory."⁶¹ No such language was contained in the Covenant with respect to "A" or "B" mandates. All of the draft trusteeship agreements submitted to the General Assembly in 1946, except that for Tanganyika, contained a provision empowering the administering authority to administer the trust territory "as an integral part" of its territory or (in the case of the New Guinea draft) "as if it were an integral part." These trusteeship agreements, however, included former "B" mandates as well as "C" mandates. Objection was raised to the phrase on the ground that it prepared the way for eventual annexation and violated the spirit of trusteeship.⁶² The mandatory powers replied that this phraseology went back to the mandates system, that it carried no implication of sovereignty, and that it was proposed solely for administrative convenience.⁶³ Except for New Zealand,⁶⁴ the mandatory powers refused to accept proposals for the deletion of the phrase "as an integral part." In the plenary session of the General Assembly, the Soviet delegation proposed a resolution rejecting the trusteeship agreements on the ground *inter alia* that they still contained the phrase "as an integral part."⁶⁵ The resolution was rejected by a vote of 34 to 6, with 11 abstentions, and the agreements were then approved by overwhelming majorities.

In view of the debates which took place during the First Session of the Assembly and of the way the clause has been interpreted in practice in the actual administration of the trust territories it would seem as if the phrase in question confers upon the administering powers no substantive rights or powers which they would not possess in its absence. To all intents and purposes the phrase seems to carry little meaning and could easily be dispensed with.

The United States draft trusteeship agreement for the former Japanese Mandated Islands, as submitted to the Security Council, similarly contained a provision that the territory was to be administered "as an integral part" of the United States.⁶⁶ In accepting an amendment to delete this phrase, the United States representative said: "In agreeing to this modification, my Government feels that it should affirm for the record that its authority in the trust territory is not to be considered in any way lessened thereby."⁶⁷

⁶¹ *Covenant of the League of Nations*, Article 22, par. 6.

⁶² UN doc. A/C.4/Sub. 1/30, November 23, 1946, pp. 1-2; A/C.4/Sub. 1/81, December 3, 1946, pp. 12-13.

⁶³ UN doc. A/C.4/Sub. 1/81, December 3, 1946, pp. 8-12; A/258, December 12, 1946, p. 6.

⁶⁴ UN doc. A/C.4/Sub. 1/71, November 29, 1946, p. 2.

⁶⁵ See *Official Records of the Second Part of the First Session of the General Assembly* (62nd Plenary Meeting, December 18, 1946), pp. 1276-1283.

⁶⁶ UN doc. S/281, February 17, 1947.

⁶⁷ Security Council Official Record 23, March 7, 1947, p. 473.

9. *Are administering authorities free to erect military and naval bases in non-strategic trust territories?*

It was a basic conception underlying the League Mandates system that mandated territories should be kept free of all military and naval activities. Article 22 of the League Covenant laid it down in absolute terms that in "B" and in "C" mandates the Mandatory state must prevent "the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory."

In writing the San Francisco Charter, however, an attempt was made to integrate trusteeship territories into the general program of the United Nations for the security of all peoples. Those framing the United Nations Charter at San Francisco felt strongly the lesson of the Second World War. They were determined that never again should Pacific Islands or other non-self-governing territories be permitted to serve as bases for aggression by militaristic nations. In so far as they possessed potential value as military or naval bases, they must be utilized for the common defense of the United Nations fighting for human rights and never for the aggressive designs of any single state acting in its own interests.⁶⁸

Under the trusteeship system the attempt is being made to change such territories from possible international liabilities into assets. Not only are such territories removed from the area of international rivalry, but by means of the Charter provisions an effort is made to turn them into islands of security. Article 84 of the Charter makes it the positive duty of the administering authority "to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority. . . ."

All eight of the draft trusteeship agreements submitted to the General Assembly in 1946 contained similar clauses entitling the administering authority to establish bases and to station and employ armed forces in the trust territory. Strong opposition to these clauses was expressed on the ground that such powers would go beyond the limits of Article 84 which defines the forces which the administering authority may make use of as volunteer forces, facilities, and assistance. It was asserted that if the administering authority found it necessary to establish bases and employ forces in a trust territory, that territory would become a strategic area

⁶⁸ See *The Question of Fortifications and Volunteer Forces in Trust Territories (Article 84): Memorandum Prepared by the Secretariat*, UN doc. A/C.4/40, November 3, 1946.

and would fall within the jurisdiction of the Security Council under Articles 82 and 83.⁶⁹

To this assertion the mandatory powers, supported by the United States, objected that, unlike the mandates system, the trusteeship system made it the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security; and that in order to fulfill this positive duty it was often vitally necessary under modern conditions of warfare to erect military and naval bases. After long arguments the Soviet Delegation proposed in the Assembly a resolution for the rejection of the proposed trusteeship agreements on these and other grounds. The question was finally settled by the Assembly's voting down the Soviet resolution and with a large majority approving the trusteeship agreements containing the military bases clause.⁷⁰

In 1947 the same question arose with regard to the Nauru agreement and was settled in the same way. Australia, New Zealand, and the United Kingdom declined, as in the previous year, to accept the Soviet argument that establishment of bases in trust territories requires approval by the Security Council; but they accepted an amendment to Article 7 of the agreement which makes specific reference to Article 84 of the Charter.⁷¹ The Nauru agreement, containing a clause permitting the establishment of military bases, was similarly approved by the Assembly.⁷²

10. *How can trusteeship agreements be terminated?*

Under the mandates system no specific procedure was set out in the Covenant or the terms of mandate for the termination of the mandatory regimes.⁷³ The question of termination arose with regard to the "A" mandates, the independence of which was provisionally recognized in the Covenant. Iraq became independent on October 3, 1932, by its admission to the League of Nations by unanimous vote of the League Assembly.⁷⁴ This action followed acceptance by Iraq of a Declaration, drawn up by the Council of the League of Nations, concerning protection of minorities, judicial organization and other matters.⁷⁵ Syria and the Lebanon, after

⁶⁹ It was further maintained that any military measures taken in this connection would have to be set forth in special agreements negotiated on the initiative of the Security Council under Article 43. *Official Records of the Second Part of the First Session of the General Assembly*, 1946 (62nd Plenary, Dec. 13, 1946), pp. 1279-1280.

⁷⁰ Same, pp. 1282-1283, 1286.

⁷¹ UN doc. A/420, October 27, 1947.

⁷² A/P.V./104, November 1, 1947, p. 31.

⁷³ The Mandates merely contained a stipulation that their terms could not be modified without the consent of the Council of the League of Nations.

⁷⁴ *League of Nations, Records of the Thirteenth Assembly: Plenary Session*, p. 47.

⁷⁵ For text of the Declaration as approved by the League Council on May 19, 1932 and accepted by Iraq on May 30, 1932, see *League of Nations Official Journal*, 1932, pp. 1347-50.

being recognized by a number of countries, were invited to the San Francisco Conference where they signed the Charter.⁷⁶

A General Assembly resolution in 1946⁷⁷ welcomed a declaration by the United Kingdom of its intention to establish the independence of Trans-Jordan.⁷⁸ Later the League of Nations Assembly in its final session adopted a resolution welcoming "the termination of the mandated status of Syria, the Lebanon, and Trans-Jordan, which have, since the last session of the Assembly, become independent members of the world community."⁷⁹

The United Kingdom has signed a treaty with Transjordan⁸⁰ recognizing its independence and, with other countries, has supported it for membership in the United Nations. The question of the termination of the Mandate for Palestine and of the future government of that territory has been the subject of extensive consideration by the United Nations during the past year and is the subject of a resolution adopted by the General Assembly on November 29, 1947.⁸¹

The Charter of the United Nations, like the League Covenant, makes no specific provision for the termination of a trusteeship agreement. It is fair to assume, however, that an agreement may be terminated under Article 79, which states that the terms of trusteeship, "including any alteration or amendment," shall be agreed upon by the states directly concerned and approved by either the General Assembly or the Security Council. None of the nine agreements approved by the General Assembly contains any special provision with regard to termination other than that the agreement may not be altered or amended except in accordance with

⁷⁶ It is to be noted that a clause was included in the Charter (Article 78) providing that "The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality."

⁷⁷ Resolution on Non-Self-Governing Peoples Adopted by the General Assembly on February 9, 1946. UN doc. A/64, p. 13.

⁷⁸ Statement to the General Assembly by Mr. Bevin on behalf of the United Kingdom on January 17, 1946. *Journal of the General Assembly, First Part of the First Session*, No. 8, p. 177.

⁷⁹ Resolution on Mandates adopted on April 18, 1946. See *League of Nations Official Journal, Special Supplement No. 194, Records of the Twentieth (Conclusion) and Twenty-first Ordinary Sessions of the Assembly*, pp. 278-279.

⁸⁰ United Kingdom *Treaty Series*, No. 32 (1946).

⁸¹ Resolution on the Future Government of Palestine [No. 181 (II)] adopted by the General Assembly on November 29, 1947. This resolution contemplates the termination of the Mandate for Palestine by the establishment of an independent Arab State, an independent Jewish State, and a City of Jerusalem to be administered by the United Nations Trusteeship Council under a special international regime. The Assembly Plan sets out the text of a Declaration to be made by the provisional government of each of the two proposed States before independence. The similarity of this procedure to that followed by the League of Nations in the case of the independence of Iraq is clear.

Article 79 and, in some instances, Articles 83 and 85. The United States trusteeship agreement for the former Japanese Mandated Islands contains, however, a specific provision in Article 15 that "the terms of the present agreement shall not be altered, amended, or terminated without the consent of the administering authority."

As the trusteeship system matures one of its major problems will be the development of procedures for the termination of trusteeships, of standards for determining when a people under trusteeship is prepared for self-government or independence, and of guarantees which should be required as a condition precedent to independence.⁸²

11. In the supervision of strategic trust areas by the United Nations what are the respective roles of the Security Council and the Trusteeship Council?

For the enforcement of the international peace some trust areas may be of such outstanding strategic importance as to require special treatment as "strategic areas." Although the basic objectives of the trusteeship system, as set forth in Article 76, are equally applicable to both, trusteeship agreements for strategic areas must be approved by the Security Council rather than by the General Assembly.

The Charter devotes only two short articles to this highly important subject. Article 82 provides that "there may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the territory to which the agreement applies. . . ."

Article 83 is as follows:

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

The only trusteeship agreement yet submitted to the Security Council, that for the former Japanese Mandated Islands, designates the whole of

⁸²It should be noted that the termination of a trusteeship or mandate does not necessarily require independence. The Charter itself refers to "self-government or independence." (See Section 5 above.) The General Assembly, in dealing with the question of South West Africa, has already considered proposals to terminate a mandate in a direction other than independence.

the territory as a strategic area.⁸³ This was done, the United States representative explained to the Security Council, because of the "paramount strategic importance" of the islands.⁸⁴

The Charter accords to the Trusteeship Council in the case of non-strategic trust territories the power to submit questionnaires to the administering authorities and consider reports based upon them, to examine petitions, and to provide for periodic visits to trust territories. In the case of strategic trust areas the Security Council has no such powers.

Nevertheless, with regard to the Pacific Islands trusteeship, the United States has taken the liberal position that, except for the right to limit inquisitorial powers in specified "closed areas," the Pacific Islands shall be subject, like non-strategic areas, to the powers accorded to the Trusteeship Council in Articles 87 and 88 of the Charter.⁸⁵ In other words, the Pacific Islands trusteeship accords to the United Nations the right, except in closed areas, to consider reports submitted by the administering authority based on questionnaires, to examine petitions and even to provide for periodic visits.⁸⁶

The provisions of Articles 82 and 83 of the Charter and of Article 13 of

⁸³ Article 1. For text of draft agreement submitted by the United States to Security Council, see UN doc. S/281, February 17, 1947; for text as approved, see UN doc. S/318, April 2, 1947. See also Robert B. Robbins, *United States Trusteeship for the Territory of the Pacific Islands in Two Aspects of Trusteeship*, Department of State Publication 2850, 1947.

⁸⁴ In laying the draft before the Security Council, the United States representative declared: "The American people are firmly resolved that this area shall never again be used as a springboard for aggression against the United States or any other member of the United Nations. . . . Our purpose is to defend the security of these islands in a manner that will contribute to the building up of genuine, effective, and enforceable collective security for all members of the United Nations." Department of State Publication 2784 (1947), p. 16.

⁸⁵ Article 13 of the trust agreement is as follows: "The provisions of Articles 87 and 88 of the Charter shall be applicable to the trust territory, provided that the administering authority may determine the extent of their applicability to any areas which may from time to time be specified by it as closed for security reasons." UN doc. S/318, April 2, 1947.

⁸⁶ In the consideration by the Security Council of the United States draft agreement, Article 13 came in for relatively little discussion. The United States representative in his speech presenting the agreement to the Security Council stated that "Although this is a strategic area . . . the United States draft agreement goes beyond the requirements of the Charter in strategic areas. It provides that Articles 87 and 88—relating to reports, petitions, visits, and questionnaires in non-strategic trusteeship areas—shall be applicable to the whole of this trust territory, except that the administering authority may determine the extent of applicability in any areas which may from time to time be specified by the administering authority as closed for security reasons. This exception has been made in recognition of the fact that an administering authority of a strategic trust territory should have the authority necessary to safeguard the installations established in the discharge of its responsibilities for the maintenance of international peace and security." UN doc. S/P.V./113, February 26, 1947, pp. 14-16.

the United States trusteeship agreement have raised the difficult question as to exactly how United Nations supervision is to be exercised in a strategic area.

Examination of the records of the meetings of the Trusteeship Committee at San Francisco, of the Executive Committee to the Preparatory Commission, and of the Preparatory Commission in London fails to reveal any discussions as to the interpretation of Article 83. Neither was the question raised in the first or second parts of the First Session of the General Assembly.

Article 83 provides that "all functions of the United Nations relating to strategic areas . . . shall be exercised by the Security Council," but that "the Security Council shall . . . avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social and educational matters in the strategic areas." In the Pacific Islands trusteeship agreement Article 13 provides that the provisions of Articles 87 and 88 of the Charter (authorizing the Trusteeship Council to submit questionnaires, examine petitions and provide for periodic visits to trust territories) shall be applicable to the trust territory, provided that the administering authority may determine the extent of their applicability to such areas as have been specified as closed for security reasons.

In view of these provisions exactly how shall supervision over the strategic trust area be exercised? Clearly the Security Council under Article 83(1) has the ultimate responsibility. But (1) does Article 83(3) make it obligatory for the Security Council to "avail itself of the assistance of the Trusteeship Council," and (2) if such assistance is requested shall the Trusteeship Council undertake full responsibility, subject to the general direction and overall control of the Security Council, or shall it perform only such piecemeal tasks as the Security Council may apportion to it? Specifically, with reference to the Pacific Islands trusteeship, should it be the duty of the Trusteeship Council, for instance, to formulate the questionnaire to be sent out, to examine the reports from the administering power based upon it, and in turn make its own report and recommendations to the Security Council, or should the Security Council itself formulate the questionnaire or approve it before its being sent out? The issue depends in part upon procedural relationships between the Security Council and the Trusteeship Council; but it involves very delicate issues between sovereign states which if mishandled could produce the most unhappy consequences.

On November 7, 1947, the Secretary General addressed a letter to the President of the Security Council, drawing attention to the question.⁸⁷ The Security Council referred the problem to its Committee of Experts to report back to the Council. During the deliberations of the Committee

⁸⁷ UN doc. S/599.

of Experts, considerable divergency of opinion developed, both as to the question whether any obligation rested upon the Security Council to avail itself of the assistance of the Trusteeship Council and as to the procedure to be followed if such assistance were requested.⁸⁸ As a result of protracted discussions the Committee of Experts recommended to the Security Council that it pass a resolution "that the Trusteeship Council be requested . . . to perform in accordance with its own procedures, on behalf of the Security Council, the functions specified in Articles 87 and 88 of the Charter relating to the political, economic, social, and educational advancement of the inhabitants of such strategic areas"; and "that the Trusteeship Council be requested to send to the Security Council, one month before forwarding to the administering authority, a copy of the questionnaire formulated in accordance with Article 88 of the Charter and any amendments to such questionnaire which may be made from time to time by the Trusteeship Council. . . ."⁸⁹

At the time of writing (March 1948) the Security Council has not yet acted upon the report of the Committee of Experts.

⁸⁸ The views of the United States as to these questions were set forth by the American representative in the Committee of Experts. In discussing the respective functions of the Security Council and the Trusteeship Council he said that under Article 83(3), although the Security Council had full and final responsibility, the Security Council was obliged to ask the assistance of the Trusteeship Council in political, economic, social and educational matters. He considered that it would be preferable for the Security Council to give the Trusteeship Council a general authority subject to the general supervision of the Security Council exercised periodically rather than for the Security Council to ask the assistance of the Trusteeship Council in a "piecemeal" manner in each separate instance. The Trusteeship Council was better qualified to deal with questions relating to the welfare of the inhabitants of trust territories. The Trusteeship Council could take action with respect to questionnaires similar to that which it took on behalf of and under the authority of the General Assembly. He emphasized that under Article 18 of the Trust Agreement and Article 83 of the Charter this questionnaire is limited in scope to the political, economic, social and educational advancement of the inhabitants of the Trust Territory and that therefore the United Nations had no authority to include questions with respect to fortifications and defenses for military purposes, or any other question of a military nature. The Trusteeship Council should also take appropriate measures as to petitions and visits. The Trusteeship Council should report on any measure it took to the Security Council, which could take any decision it deemed advisable. See *Preliminary Report by the Committee of Experts to the Security Council on the Respective Functions of the Security Council and the Trusteeship Council with regard to the Trusteeship System as Applied to Strategic Areas*, UN doc. S/642, January 12, 1948, pp. 8-4.

⁸⁹ The recommended resolution goes on to provide "that the Secretary-General be requested to advise the Security Council of all reports and petitions received from or relating to strategic areas under trusteeship, and to send copies thereof, as soon as possible after receipt, to the Trusteeship Council for examination and report to the Security Council," and "that the Trusteeship Council be requested to submit to the Security Council its reports and recommendations on political, economic and educational matters affecting strategic areas under trusteeship." Same, p. 9.

12. *Under the trusteeship agreement for the former Japanese Mandated Islands, to what extent is international supervision possible over "closed areas"?*

The concept of a closed area within a strategic area is a novel and useful one. It provides a means by which certain areas may be closed, if necessary, for security reasons, and by which all the rest of the territory may be treated, for all practical purposes, as if it were a "non-strategic" trust territory.

The Pacific Islands trusteeship agreement is the only one which has thus far set up a strategic area; and this agreement empowers the administering authority to establish "closed areas."⁹⁰ The only area which has thus far been closed is Eniwetok Atoll. On December 2, 1947, the United States representative informed the Security Council that, effective December 1, 1947, Eniwetok Atoll was closed for security reasons in order that the United States Government, acting through its Atomic Energy Commission, might conduct necessary experiments relating to nuclear fission.⁹¹ The Security Council was further informed that periodic visits provided for in Article 87(c) of the Charter are suspended in the closed area until further notice, but that the other provisions of Article 87 will continue to apply. The United States stated that, under Article 88, it would report to the United Nations on the advancement of the inhabitants and that the people of Eniwetok Atoll would be moved to new homes on sites selected by them.

At the present time, therefore, except in Eniwetok Atoll, the United Nations may exercise complete international supervision over the Pacific trust area by exactly the same methods as if it were a non-strategic area. The same objectives of the trusteeship system are applicable. And even in Eniwetok international supervision may also continue in the form of questionnaires, the making of reports, the examination of petitions and all other methods except the making of periodic visits.⁹²

⁹⁰ Article 13.

⁹¹ UN doc. S/613, December 2, 1947, p. 1.

⁹² In a commentary prepared by the United States for circulation to the Security Council and released to the press at the time of the Security Council's consideration of the United States draft agreement in February 1947, giving article-by-article explanatory remarks, it was pointed out that "Article 18 of the draft agreement states only that the *extent* of applicability of Articles 87 and 88 of the Charter may, in 'closed' areas, be determined by the administering authority. Hence, even in such areas the Trusteeship Council can, and normally would, be authorized to request and consider reports submitted by the administering authority, to accept petitions and examine them in consultation with the administering authority, and otherwise to keep itself informed of the political, economic, social, and educational development of the inhabitants." See *Draft Trusteeship Agreement for the Japanese Mandated Islands*, State Department Publication 2784 (1947), pp. 11-12.

13. *Can the Trusteeship Council exercise functions outside of the Trusteeship system?*

The only functions and powers conferred upon the Trusteeship Council by the Charter are set forth in Articles 87 and 88; and these are confined exclusively to trust territories, to be exercised in collaboration with the administering authorities. Can the Trusteeship Council constitutionally exercise functions and powers with respect to non-trust territories and therefore not included within the grant of power under Articles 87 and 88? The answer will have far-reaching implications for the United Nations since the Trusteeship Council is one of its principal organs.

From a purely legal standpoint it could be argued by a "strict constructionist" that the activities of the Trusteeship Council must necessarily be confined within the powers specifically granted to it by the Charter. This would mean that the Trusteeship Council could not step outside of the confines of Articles 87 and 88. Under this view any action taken by the Trusteeship Council with respect to non-trust territories must be "unconstitutional" and invalid.

On the other hand, it can be argued with still greater force that since the Trusteeship Council is a body possessing special competence in matters relating to the governance of dependent peoples, and since there is nothing in the Charter to preclude the Assembly from delegating to the Trusteeship Council the performance of special tasks relating to non-self-governing peoples, the Assembly may constitutionally do so; and if it does, the Trusteeship Council may exercise powers thus granted by the Assembly even though these fall outside the confines of Articles 87 and 88.

However the legal arguments might run, the question has now been definitely settled by the course of events and the action of the General Assembly. During its Second Session in 1947 the General Assembly voted, in each case by substantial majorities, to delegate to the Trusteeship Council two separate tasks of a non-trusteeship character.

In the one case the Trusteeship Council was directed by the General Assembly to examine the report on South West Africa—a mandated territory, not a trust territory—transmitted by the Union of South Africa for the "information of the United Nations."⁹³ In the exercise of this power a number of questions remain still unanswered. In examining the South West Africa Report, for instance, is the Council confined to a consideration of the facts stated in the Report or may it extend its "examination" to matters not specifically dealt with in the Report? May it hear oral or written statements by others with regard to conditions within the territory? May it receive and examine petitions with respect to the

⁹³ See resolution on South West Africa adopted by the General Assembly on November 1, 1947. UN doc. T/52, November 7, 1947. For discussions on this resolution see UN doc. A/C.4/SB.33, 38, 39 and 40, and A/P.V./105.

territory? These are very practical questions which still remain to be worked out.⁹⁴

In the second case the Trusteeship Council, as a part of the Assembly plan for Palestine, was assigned the responsibility for administering the City of Jerusalem on behalf of the United Nations. The Plan for Jerusalem embodied in the Assembly's resolution is based upon Jerusalem's being administered, not as a trust territory, but as a "corpus separatum" under a "Special International Regime."⁹⁵ The Trusteeship Council is directed to adopt a statute for the City, to appoint a Governor, and to administer the City on behalf of the United Nations. The General Assembly, therefore, by delegating to the Trusteeship Council the responsibility for administering Jerusalem, clothed the Trusteeship Council with functions and powers clearly not included within Articles 87 and 88.

It has thus been definitely established that in the view of a two-thirds majority of the Members of the United Nations the Trusteeship Council can be called upon for the performance of tasks outside the trusteeship system. True, these decisions were reached largely on a pragmatic basis, each with a particular and immediate political problem in view. But, as suggested above, it must be recognized that in the shaping of political organizations such as the United Nations and in the determination of their powers, the votes of Member states are often of even greater significance than the determinations of judicial tribunals.

Even from a purely legal viewpoint the position taken by the General Assembly would seem to be incontrovertible. The Charter nowhere precludes the grant of non-trusteeship powers to the Trusteeship Council. And the Charter expressly clothes the General Assembly with the power to "establish such subsidiary organs as it deems necessary for the performance of its functions."⁹⁶ The General Assembly clearly could therefore create, for the performance of functions within its own powers, a subsidiary organ composed of the identical membership of the Trusteeship

⁹⁴In the course of debate in the Trusteeship Council, Ambassador Liu Chieh, the representative of China, said: "There is no more restriction under the General Assembly Resolution (on South West Africa) than there is under Article 87. I submit, therefore, that in order to carry out the duty which has been entrusted to the Trusteeship Council, we must set out with the same zeal, the same impartiality, the same objectivity, the same care, and the same sense of responsibility as we would display in the examination of reports from other trust territories. . . . I should think that in the examination of a report a representative is not precluded from expressing an opinion on subjects that arise out of the examination of the report if he chooses to refer to information which he derives from other sources. For instance, he may see a figure in the Report on South West Africa. He may then refer to some other figure which he saw in other reports and ask: 'Why is there such a discrepancy?' " UN doc. T/P.V./42, December 12, 1947, p. 17.

⁹⁵See Resolution on the Future Government of Palestine adopted by the General Assembly on November 29, 1947. UN doc. A/516, November 25, 1947.

⁹⁶*Charter of the United Nations*, Article 22.

Council and endowed with similar powers and functions. If this be true it would seem beyond argument that the General Assembly may constitutionally clothe the Trusteeship Council with responsibility for the performance of tasks outside of trust territories. It will be interesting to observe how far this development may be carried.

III. CONCLUSIONS

It would be a mistake to suppose that because Chapters XII and XIII setting up the trusteeship system have raised some of the most complex legal problems of the entire Charter that, as a result, legal difficulties and problems are preventing the Trusteeship Council from effectively carrying out its functions. It is true that problems exist and many of these are still unsolved. The Trusteeship Council is plowing virgin soil; it is exploring new and untried paths. Hence, it is inevitable that it be confronted with innumerable difficult legal and political problems. But the really important and outstanding fact is that these problems are not stemming its progress. No legal or constitutional barrier is preventing the Trusteeship Council from going successfully forward in its pioneering work. One must draw the conclusion that its legal underpinning is sound.

The Charter provisions for the composition of the Council seem also sound. The Permanent Mandates Commission which had been set up under the mandates system, was a committee of experts appointed by the League Council whose power was confined to receiving and examining annual reports and the giving of advice to the Council.⁹⁷ Many authorities ascribe the success of the Permanent Mandates Commission to the remarkably high caliber of its members who were chosen without regard to nationality. San Francisco marked a further step. To concentrate responsibility and power in its hands the Trusteeship Council was made one of the principal organs of the United Nations and was composed of representatives chosen by sovereign states, "specially qualified persons,"⁹⁸ who could speak directly for their Governments and commit them to such programs as might be agreed upon. It was a daring venture thus to combine in one and the same body both technical and political responsibilities. Many feared resulting failure. But the organ thus constituted did not fail.

Neither has the Trusteeship Council degenerated, as many feared it would, into a tug-of-war between the administering powers on the one hand, and the non-administering powers on the other. Since its composition is based upon nationality, the Council must always face this danger. But the fact that thus far the record of the votes shows that in no important issue have the representatives of the administering powers lined up solidly

⁹⁷ *Covenant of the League*, Article 22.

⁹⁸ *Charter of the United Nations*, Article 86(2).

against the non-administering ones not only reveals the high caliber and sincerity of those now sitting in the Council, but also proves that the dangers inherent in nationality representation are clearly not insurmountable. At the same time, the Charter provisions concerning the composition of the Council have resulted in the setting up of an organ of far greater political responsibility and power than the former Permanent Mandates Commission.

A third conclusion looks to the future. The very success thus far of the work of the Trusteeship Council carries inherent dangers. It must not be loaded with tasks beyond its capacities nor seek to extend its work for human welfare beyond the constitutional and legal limits fixed by the Charter. There is a growing tendency, for instance, toward extending the Council's activities into the field of all non-self-governing peoples and forgetting that except as it may be accorded exceptional powers by special vote of the General Assembly the Charter strictly restricts its powers to trust territories. Chapter XI does not fall within the scope of its powers. It is clear that the continued success of the Council's work must be based upon a careful consideration of such legal and constitutional problems as outlined above and a strict adherence to the Charter provisions.

The encouraging and the happy fact is that the constitutional framework upon which the trusteeship system rests is sound. The Trusteeship Council is an organ of great promise. What it has already achieved is a revealing indication of what may be accomplished when Members of the United Nations are willing to work together toward a common goal.

TRIALS OF WAR CRIMINALS (NON-NUREMBERG)

By WILLARD B. COWLES *

The confusion and lack of information about trials of war criminals continues. In 1945 one of our most highly talented observers on international relations made the egregious error of telling a large and intelligent body of readers that, as regards Germans who had ordered or condoned acts of brutality toward the people of conquered countries, "there is no international law in existence" under which most of them could be brought to trial. Reminiscent of this, as recently as 24 February 1948 the following appeared from the pen of an otherwise well-informed editorial writer of an American newspaper:

There was no precedent in law and justice for what was undertaken at Nuremberg. Never before in the history of man had there been an attempt to hold individuals responsible for acts committed in the course of war in all its savagery either by them directly or as a result of orders given by them, or even more remotely as the result of a program carried out by armies and individuals associated with the regime of which they were a part. . . . It can be stated more simply, perhaps, by saying that in history of war until the Nuremberg tribunals were established, there was nothing upon which to hold individuals criminally and feloniously liable for acts committed during the progress of armed conflict between nations.

The truth of the matter, as the readers of this JOURNAL need not be told, is exactly the opposite. "All the offenses of any importance which the term war crime properly denotes are old and well known in the law of war."¹ Of course there was something new at Nuremberg, but it has nothing even remotely to do with what the brilliant commentator wrote in 1945, or the learned editor in 1948.

The original Allied declaration on war crimes, made public in Moscow by Churchill, Roosevelt, and Stalin on 1 November 1943, drew a distinction as to trials for so-called "major criminals, whose offenses have no particular geographical localization," and for other war criminals. The non-major defendants were to be judged in the vicinity of their alleged crimes. A vast amount of information concerning the Nuremberg trials of the major criminals has become, and is still becoming, available. But while there have been occasional references in the press to the hundreds of trials of concentration camp commanders and other perpetrators of

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¹ 33 *Calif. L. Rev.*, (1945), 177, 181.

atrocities since V-E Day, no comprehensive report of the non-major trials had been published until the United Nations War Crimes Commission issued Volume I of the *Law Reports of Trials of War Criminals* early in 1947.² The content of this volume of *Law Reports* is the subject of this paper.

A word should be said about the purpose and arrangement of this article. It is cast in its form of serial treatment of cases following the suggestion of the Editor-in-Chief of the JOURNAL, who pointed out to the writer that, although the JOURNAL had printed the text of the Nuremberg Judgment and several articles on the subject, space was not available in addition to republish these *Law Reports* textually. It therefore became appropriate that the JOURNAL contain a digest and commentary on this document. The compass of this paper, while designed to be something more than a book review, does not purport to treat exhaustively every legal point raised in the *Law Reports*. One of the difficulties in summarizing this material has arisen from the fact that the cases contain no findings of fact. The facts as stated herein are therefore to some extent given "on information and belief"—those which, as reported, or in the light of the verdicts, seem to be satisfactorily established. The digest of each case in the *Law Reports* is followed by *Notes on the Case*, similar to a law review case note.

Purposes, Functions, and Future Plans

Lord Wright, present Chairman of the United Nations War Crimes Commission, in the Foreword to the volume, states that:

The Commission is primarily concerned with . . . "minor war criminals," but that is a misleading term because of the enormity and scope of the crimes committed, which really include all war crimes except those that were charged at the Nuremberg and Tokyo trials. . . . It will be observed that in all these cases prosecutions were brought and conducted by the military authorities. . . . In later volumes it is hoped to include reports of the trials of Germans accused of crimes in concentration camps. It was not found possible for technical reasons to include in the present volume reports of French cases, but that defect will, it is hoped, be remedied in the following volumes. It will be observed that in these reports there is a certain difficulty because the court does not deliver a reasoned judgment. . . . I cannot sufficiently emphasise what I regard as the great importance of these reports from the point of view of the future development of International Law as applied to war crimes. . . . These reports will show, for the practitioner or the student, the particular problems which have arisen and how in practice they have been dealt with and

² This document was published by H.M.S. Stationery Office; price, 2s.6d. The pattern of the Reports follows the English descriptive summaries of the cases in the *Law Reports*. This is the significance of the title of the collection. This volume will at times be referred to herein as the *Law Reports*. Citations from it, such as "P. 94" refer to the identified pages in the *Law Reports*.

also show to the historian of the laws of war the practice of courts in applying those laws to particular cases.³

The volume consists of reports of nine selected cases involving such offenses as attacks by a submarine on the survivors of a vessel it had torpedoed; reprisals against American saboteurs; slaughter of a member of the Dutch underground; wholesale murder in an insane asylum; scuttling submarines; atrocities committed by Japanese; lynching prisoners of war; selling poison gas to concentration camps for killing its inmates. The war crimes reported were committed in Germany, Holland, Italy, Poland, on the Atlantic Ocean, and on one of the Marshall Islands in the Pacific. The trials took place before British and United States military tribunals, sitting in Germany, Italy, the Netherlands, and on Kwajalein Island. The geographical areas affected include North and South America, Africa, Australia, China, Eastern and Western Europe, the Balkans, and the Soviet Union.⁴ Nationalities represented on the tribunals were Australian, Canadian, Dutch, English, Greek, and United States. The positions held by defendants ran from Private up through General and Admiral. Defendants consisted of civilians (including one woman) as well as members of the armed forces. Both army and navy officers served on the tribunals, and as prosecutors and defense counsel. German and Japanese defense counsel were permitted to act for defendants. Sentences imposed ranged from five years imprisonment to the death penalty.

Submarine Attacks on Survivors of Torpedoed Vessel

The first case reported is the trial by a British Military Court at Hamburg, Germany, of five German naval officers and one enlisted man, former members of the crew of German U-Boat 852, who, after torpedoing a merchant vessel near mid-Atlantic on the night of 13 March 1944, machine-gunned and threw hand grenades at members of its crew while they were on rafts or wreckage. The torpedoed ship was the *Peleus*, a Greek vessel chartered by the British. Its crew consisted of several nationalities, including Greeks, British, Egyptians, Chinese, a Russian, a Chilean, and a Pole. After the sinking the submarine surfaced, questioned members of the *Peleus'* crew as to the name of the ship, where she was bound, and so on, and then attacked the survivors. All except three were killed or later died of wounds. The Greek first officer, a Greek seaman, and a British seaman survived. They were finally picked up by a Portuguese vessel,

³ Quoted matter, unless otherwise identified, is taken from the case as reported in the *Law Reports*. Inasmuch as the report of each case covers only a few pages, and as all quotations are to be found within that small compass, the writer will not ordinarily interrupt the reader with footnote page references.

⁴ The states whose nationals were involved in some capacity are: Australia, Canada, China, Chile, Egypt, Germany, Greece, Italy, The Netherlands, Poland, the United Kingdom, the United States, and the USSR.

after remaining adrift nearly a month. Later U-Boat 852 was attacked from the air off the East Coast of Africa and forced to beach. Her log revealed that on 13 March 1944 she had torpedoed a vessel in the approximate position of the *Peleus*.

At the trial certain details were established. Lieutenant Heinz Eck, commander of the submarine, ordered the shooting and the throwing of grenades. Lieutenant Hoffmann, Dr. Weisspfennig, and Corporal Schwender did most of the actual shooting or throwing. The Chief Engineer, Lieutenant Lenz, upon hearing that the commander was to try to eliminate all traces of the *Peleus*, told Eck that he disagreed, but Eck was adamant. Lenz "then went below to note the survivors' statements," but later returned to the bridge and took some part in the shooting.

The prosecution based its case on the decision in the *Llandovery Castle*.⁵ In addition to the usual plea of superior orders, Defense Counsel Wegner made an interesting total-war argument. He asserted that the *Llandovery Castle* case should not be followed because "too much had happened since then; the psychology of a whole nation, not to say of the world, had changed meanwhile." This argument was apparently wholly ignored by the Commission.

Dr. Weisspfennig, one of the three who did the actual shooting and threw grenades, was a captain in the medical corps of the German Navy. Concerning him the report runs:

The Prosecutor pointed out that his case was made the worse by reason of the fact that he was of the medical profession and had no right to bear arms at all, except against savages and persons who were not in the same position as white men who fought in the war. * * * The accused Weisspfennig also referred to the [Eck's] order but admitted that in the German navy there were regulations about the conduct of medical officers which forbade them to use weapons for offensive purposes. Weisspfennig disregarded this regulation because he had received an order from the Commandant. He did not know whether his regulations provided that he could refuse to obey an order which was against the Geneva Convention. He knew what the Geneva Convention was and realised that one of the reasons why he was given protection as a doctor was because he was a non-combatant. He realised that there were survivors. He did not regard the use of the machine gun in this particular case as an offensive action.

Eck said that when operating in the South Atlantic his orders were to keep his boat concealed so far as possible. Many U-boats had been sunk there. "He thought that the rafts were a danger to him first because they would show aeroplanes the exact spot of the sinking and secondly because rafts at that time of the war, as was well known, could be provided with modern signalling communication. When he opened fire there were no human beings to be seen on the rafts. He also ordered the throwing of

⁵ The decision in this case is reproduced in this JOURNAL, Vol. 16 (1922), p. 708.

hand grenades after he had realised that mere machine gun fire would not sink the rafts." Regarding this defense of necessity, the legal adviser of the Court (the Judge Advocate), according to the *Report*, stated:

"The question whether or not any belligerent is entitled to kill an unarmed person for the purpose of saving his own life has been the subject of much discussion. It may be that circumstances can arise—it is not necessary to imagine them—in which such a killing might be justified. But the court had to consider this case on the facts which had emerged from the evidence of Eck. He cruised about the site of this sinking for five hours, he refrained from using his speed to get away as quickly as he could, he preferred to go round shooting, as he says, at wreckage by means of machine guns." The Judge Advocate asked the court whether it thought or did not think that the shooting of a machine gun on substantial pieces of wreckage and rafts would be an effective way of destroying every trace of the sinking. He asked whether it was not clearly obvious that in any event, a patch of oil would have been left which would have been an indication to any aircraft that a ship had recently been sunk. He went on to say: "Do you or do you not think that a submarine commander who was really and primarily concerned with saving his crew and his boat would have done as Captain Schnee, who was called for the defence, said he would have done, namely have removed himself and his boat at the highest possible speed at the earliest possible moment for the greatest possible distance?"

An interesting question of evidence arose. It is discussed in the following excerpt from the *Notes*:

Applying the provision of the Royal Warrant, according to which the Court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to be of assistance in proving or disproving the charge, the Court admitted *inter alia* evidence consisting of affidavits made by the three survivors of the crew of the "*Peleus*." The affidavit of one of the survivors, a British seaman, contained a paragraph stating what the third officer, who later died, had told the deponent during the time he nursed him. One of the Defending Officers objected by saying that while the Regulations did permit affidavits which would not be admissible under the normal rules of evidence, there was nothing in the Regulations which says that an affidavit which also includes a statement from a third party may be introduced. The Judge Advocate, in summing up the discussion on this point, said that it was quite clear that in a Court which was bound by the ordinary English law this evidence could not be admitted; but for convenience, and in view of the practical difficulties of obtaining evidence in cases such as this, the Court was granted a discretion to accept statements of this kind if it was so disposed. The only question was whether in the exercise of its discretion the Court thought it right to receive this statement. The Court decided to admit the statement.

Lieutenant Eck, Ensign Hoffmann, and Dr. Weisspfennig were sentenced to be shot, Lieutenant Lenz was condemned to life imprisonment, and Corporal Schwender to 15 years. The death sentences were executed at Hamburg on 30 November 1945.

Reprisals against American "Saboteurs" in Italy

Case No. 2 reports the trial in October 1945 of General Anton Dostler in Rome, Italy, by a United States Military Commission. Dostler, the commander of the 75th German Army Corps, was charged with having ordered the shooting, without trial, of two United States Army officers and thirteen enlisted men. The essential facts, comparable to those of the saboteurs who came into the United States in 1942, follow. In March 1944, when the front lines in Italy were at Cassino and at the Anzio beach-head, two officers and thirteen men disembarked on the Italian coast 250 miles north of that front. Each of the men had an Italian background. They came from a company recruited in the United States to work behind the lines. It does not appear whether they were members of the OSS. Their aim was to demolish the mainline railroad tunnel between La Spezia and Genoa.

The group was captured by Italian and German soldiers. Taken to La Spezia and interrogated by two German Naval intelligence officers, one of the American officers revealed the story of the mission. The capture came to the attention of Dostler. Despite two attempts by subordinate German officers by telephone to change his decision, Dostler ordered the captured Americans to be shot immediately, and the Americans were accordingly executed without trial on 25 March 1944.

Jurisdiction. The Dostler case was completed two months before the decision of the United States Military Commission in the Yamashita case.⁶ A plea to the jurisdiction of the Commission is worth noting, though the answer had been familiar to the military lawyer for some time. The same question was later presented to and decided by the United States Supreme Court in *Ex parte Yamashita*.⁷ Article 63 of the 1929 Geneva Convention on Prisoners of War provides that a "sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining Power."⁷ It followed, the Defense contended, that the only proper method to try Dostler would be by a United States court martial. The Prosecution responded that the relevant provisions of the Geneva Convention pertained only to offenses committed by a prisoner of war after capture, not to offenses committed against the law of nations prior

⁶ Data as to time of trial and decision, taken from *Ex parte Yamashita* (1946), 327 U. S. 1.

⁷ 47 Stat. 2021, 2052; 4 Malloy 5224, 5240.

to becoming a prisoner of war. The Prosecution might have added that under Article 1 of the Geneva Convention only individuals who have conducted their operations in accordance with the laws and customs of war have the rights of prisoners of war under that treaty. War criminals have not so conducted themselves.

Reprisals. It may be noted that before the coming into force of the Geneva Prisoners of War Convention in 1929 reprisals were permitted against any or all classes of prisoners of war. Article 2 of this Convention changed the old law only with respect to certain types of prisoners of war. Individuals who are "prisoners of war" in the sense in which that term is used in the 1929 Convention are defined in Article 1 as those individuals who are commanded by a person responsible for his subordinates, who have a fixed distinctive emblem recognizable at a distance, who carry their arms openly, and who conduct their operations in accordance with the laws and customs of war—conditions which the reader will recognize as being identical with the substance of Article 1 of the 1907 Hague Regulations. The effect of Articles 1 and 2 of the Geneva Convention is to prohibit "measures of reprisal" against "prisoners of war" who can qualify under the conditions of Article 1. The basis of the charge against Dostler was that he ordered the group to be shot "summarily," without trial. If these Americans wore no fixed distinctive emblems recognizable at a distance, if they did not carry their arms openly, if they did not conduct their operations in accordance with the laws and customs of war, then the captor need not have treated them in accordance with the Geneva Convention, and they might have become, under proper conditions, the subject of reprisals. The statement of the charge against Dostler, as reported, does not assert that the Americans were in uniform or that they otherwise complied with Article 1 of the Hague Regulations. Although there are four paragraphs under the heading, "The Evidence," the *Law Reports* say nothing about the other conditions and leave to wishful inference the all-important question whether the group was in uniform, and so on. The Prosecution took the position that since those killed had been United States soldiers "dressed as such and engaged on a genuine military mission," they were entitled to be treated as prisoners of war. "Their execution without trial, therefore, was contrary to the Hague Convention of 1907 and to a rule of customary International Law at least 500 or 600 years old." The reference here to dress and mission is not set out in the *Reports* as a finding of fact, but as prosecutorial "argument."

One of the witnesses for the Prosecution was a United States captain who had directed the operation from headquarters. He testified "that the fifteen soldiers had been *bona fide* members of the United States forces; he also bore witness as to the nature of the mission on which they were sent, and as to the clothing and equipment which they wore." The *Report* does not state what he said about this. Prosecution witnesses include an

Italian employee of the Todt Organization and two German Naval intelligence officers. The *Report* says that they "gave further evidence regarding the deceased's clothing" but does not say what the nature of that evidence was. What gives one pause is the position of the Defense—that to be accorded the rights of a prisoner of war under the Geneva Convention it was necessary for the captured individual to have a fixed and distinctive emblem recognizable at a distance. "The submission of the Defence," says the *Law Reports*, "was that the American soldiers had worn no such distinctive emblem and that their mission had been undertaken for the purpose of sabotage to be accomplished by stealth and without engaging the enemy."^{7a}

It does not follow that the wearing of civilian clothes permits ordering summary shooting without a trial. Defense counsel "admitted that they were entitled to a lawful trial even if they were treated as spies." But this is not the essential point in this case for reasons which follow.

Reprisals and Superior Orders. The basis of Dostler's plea of superior orders was founded on a "very high" and an "extremely secret" reprisal order which had been issued directly from Hitler. It was dated 18 October 1942 and the text as reproduced in the *Law Reports* is set out in the footnote.⁸ As background the Defense established that in 1933 all officers of the German Army had been required to take a special oath of obedience to Hitler. Dostler testified that under this oath he understood it

^{7a} In view of the indefiniteness of the *Law Reports* on this matter, and on the assumption that the original record of the trial would now be in the Office of the Judge Advocate General of the Army of the United States, the present writer wrote the latter asking whether or not the record of the trial showed a finding of fact by the court that the American soldiers were in uniform, and if so what that finding was. The Judge Advocate General, Major General Thomas H. Green, replied as follows: "The record shows that the court made a finding only as to the general issue—the guilt of the accused. There is, however, uncontradicted testimony that, at the time of their landing on Italian soil, the members of the group were dressed 'in the field uniform of the Army of the United States.' There is testimony that they were similarly dressed at the time of their capture. The metal insignia of the two officers in the group had been removed because of the possibility that these items would reflect light or might cause unnecessary noise."

⁸ The text of the *Führerbefehl* of 18 October 1942, as produced in the trial is as follows:

1. Recently our adversaries have employed methods of warfare contrary to the provisions of the Geneva Convention. The attitude of the so-called commandos, who are recruited in part among common criminals released from prison, is particularly brutal and underhanded. From captured documents it has been learned that they have orders not only to bind prisoners but to kill them without hesitation should they become an encumbrance or constitute an obstacle to the completion of their mission. Finally, we have captured orders which advocate putting prisoners to death as a matter of principle.

2. For this reason, an addition to the communiqué of the Wehrmacht of 7th October, 1942, is announced; that, in the future, Germany will resort to the same methods in

to be mandatory upon him to obey all the *Führer's* orders. General von Saenger pointed out that German officers could not resign from the German Army during time of war, and testified that when the *Führer* issued orders which "interfered with international law," the officers at the front who had to carry them out were convinced that Hitler would advise the enemy governments and that, in this way, the German field officers would not be "responsible for crimes committed" in carrying out such orders.

In the case of these captured Americans, Dostler apparently consulted his staff. To them it "appeared without doubt that the operation came under the *Führerbefehl*." Accordingly Dostler ordered that they be shot forthwith. Acts of legitimate reprisals are not war crimes. Query whether or not past *commando* practice would justify such reprisals and whether this operation was more like a cavalry raid or secret sabotage activity. "Defense Counsel quoted a statement from Oppenheim-Lauterpacht, *International Law*, 6th edition, Volume 2, page 453, to the effect that an act otherwise amounting to a war crime might have been executed in obedience to orders conceived as a measure of reprisals, and that a Court was bound to take into consideration such a circumstance," and he "invoked the text of the *Führerbefehl* which in its first sentence itself refers to the Geneva Convention and represents itself as a reprisal order made in view of the alleged illegal methods of warfare employed by the Allies. Counsel claimed that retaliation was recognized by the Geneva Convention as lawful, that the *Führerbefehl* stated the basis on which it rested and that the accused therefore had a perfect right to believe that the order, as a reprisal order, was legitimate."

regard to these groups of British saboteurs and their accomplices—that is to say that German troops will exterminate them without mercy wherever they find them.

3. Therefore, I command that: Henceforth all enemy troops encountered by German troops during so-called *commando* operations, in Europe or in Africa, though they appear to be soldiers in uniform or demolition groups, armed or unarmed, are to be exterminated to the last man, either in combat or in pursuit. It matters not in the least whether they have been landed by ships or planes or dropped by parachute. If such men appear to be about to surrender, no quarter should be given them on general principle. A detailed report on this point is to be addressed in each case to the OKW for inclusion in the Wehrmacht communiqué.

4. If members of such *commando* units, acting as agents, saboteurs, etc., fall into the hands of the Wehrmacht through different channels (for example, through the police in occupied territories), they are to be handed over to the Sicherheitsdienst without delay. It is formally forbidden to keep them, even temporarily, under military supervision (for example, in P/W camps, etc.).

5. These provisions do not apply to enemy soldiers who surrender or are captured in actual combat within the limits of normal combat activities (offensives, large-scale air or seaborne landings). Nor do they apply to enemy troops captured during naval engagements, nor to aviators who have baled out to save lives, during aerial combat.

6. I will summon before the tribunal of war all leaders and officers who fail to carry out these instructions—either by failure to inform their men or by their disobedience of this order in action. (Pp. 33-34.)

Perhaps the most solid prosecutorial basis was the argument that the situation did not in fact come within the terms of the *Führerbefehl*. In paragraphs 3 and 4 of that document⁹ it was directed that *commandos* should be annihilated "in combat or in pursuit," but that if, through other channels, they came into the hands of the *Wehrmacht* (as they did in this instance), they should be handed over to the SS. These Americans, as the prosecution pointed out, had been killed neither in combat nor in pursuit, nor had they been handed over to the SS.

The Commission found General Dostler guilty; sentenced him to be shot to death "by musketry."⁹ The *Report* states that the sentence was approved and confirmed and carried into execution.

The Dutch Underground

Case No. 3 arose from a familiar situation. In 1944, after baling out of a burning airplane over Holland, Gerald Hood, a British pilot, obtained a civilian overcoat and trousers from a farmer and hid his uniform and parachute. Later (August 1944) a member of the Dutch underground brought Hood to a house occupied by a Mrs. van der Wal. Her son Bote was hiding from the Germans there to avoid compulsory labor in Germany. During the night of 13-14 March 1945 Dutch Nazi police, accompanied by SS men, came to the house searching for Bote. They found Bote and Hood and took both to the Almelo prison, where they were interrogated by the defendant Sandrock.

Later SS Lieutenant Hardegen told Sandrock that Hood and Bote had been condemned to death and ordered Sandrock to detail men to accompany him (Sandrock) and Hood to the outskirts of Almelo where Hood was to be shot. Thereafter Sandrock gave such orders to the defendants Schweinberger and Hegemann. Sandrock told Hood before he was shot that he had been condemned to death. From about one yard behind, Schweinberger shot Hood at the base of the skull. Sandrock dug the grave, Schweinberger stole Hood's wrist watch, and Hegemann prevented anyone from approaching and helped carry Hood to the grave. A few days later Bote was killed under the same circumstances except that the defendant Wiegner took Hegemann's place.

The British Military Court sat in Almelo, Holland. There was an agreement with the Dutch Government in covering this. Defense counsel asserted that if a trial had taken place and a death sentence given, it would not have been illegal to have carried it out. The defense argued also that under the circumstances the defendants were under the "superior force" of the SS and that in the light of the power of the SS it was enough

⁹ This phrase is a vestige of military law from the days when such firearms were used. Traditionally it was a more honorable death than hanging. The phrase still appears in the United States Articles of War.

to be told by Hardegen that they had been tried and sentenced to death—Hood as a spy and Bote as a war traitor for having harbored a spy.

The prosecution took the position that as a matter of fact neither Hood nor van der Wal was ever tried. It insisted that a

court must exercise its ordinary common sense as to whether any of the accused even believed that such a trial could have taken place when they saw that first Hood and then van der Wal were left sitting in an office for several hours under no escort except such guard as was afforded by various personnel of the Dienststelle [headquarters] coming in and out in the course of their various duties.

In summing up, the British Judge Advocate advising the tribunal said that if the court believed the situation to be such that a reasonable man might have believed that Hood "had been tried according to law, and that they [the defendants] were carrying out a proper judicial legal [sic] execution, then it would be open to the court to acquit the accused." The *Notes* state that "the verdict of the Military Court shows that the Court found as a fact that the accused had reason to believe neither that the victims had been legally tried and sentenced nor that the accused were carrying out a legitimate sentence."

With regard to superior orders, the prosecution quoted an interesting and significant statement from an article by Dr. Goebbels, stated to have been published in a German newspaper on 28 May 1944.

No international law of warfare is in existence which provides that a soldier who has committed a mean crime can escape punishment by pleading as his defence that he followed the commands of his superiors. This holds particularly true if those commands are contrary to all human ethics and opposed to the well-established international usage of warfare.

Sandrock and Schweinberger were sentenced to be hanged; Hegemann and Wiegner to 15 years imprisonment. The death sentences were executed 13 December 1945.

Insane Asylum Murders

Case No. 4 records the gruesome story of the trial of the administrative head, Alfons Klein, and six members of the staff of a German sanatorium by a United States military commission at Wiesbaden, Germany, in October 1945. The setting of this especially frightful case is a small state sanatorium (called Hadamar), which had been operating in the town of Hadamar, Germany, for many years, specializing in the care of the mentally ill.

Supposedly pursuant to a Nazi law, between 1941 and 1944 at least 10,000 Germans, allegedly mentally ill, were admitted to Hadamar and put to death, mostly by poisonous medications or injections. In 1944

Klein was informed by two *Gauleiter* that some incurable tubercular laborers would arrive at Hadamar. Later he was directed to kill them under the same law and in the same way in which he had disposed of German insane persons. From June 1944 to March 1945 over 400 Polish and Russian men, women, and children were sent to Hadamar from various institutions and camps in Germany, or German-occupied territory. Records were made of their names, sex, nationality, and death. Before arrival the victims had been told that they had tuberculosis. After arrival the Poles and Russians were neither examined nor treated for tuberculosis. Indeed Hadamar had none of the usual facilities for treating this disease and the only doctor there was a psychiatrist. An autopsy "of the bodies of six of the Poles and Russians showed that at least one of the victims had not suffered from tuberculosis and that in none of them was the disease in such an advanced state that death therefrom was reasonably to be expected within a short period of time."

Assurances were given that they were being treated for the disease from which they allegedly suffered or "that they were being inoculated against communicable diseases," and they submitted to hypodermic injections of morphine or scopolamine, or derivatives thereof, or to oral doses of veronal or chloral. After these injections or medications, only prefunctory examinations were made by hospital personnel "to determine whether the victims were in fact dead," before burial in mass graves in the institution's cemetery. That they died as a result of overdoses of narcotics and within a few days after arrival was not shown on the hospital records. The records of the deaths were always falsified as to dates and causes. With the exception of one woman who escaped all the Poles and Russians were killed by these methods within a day or two of arrival.¹⁰

¹⁰ Other interesting facts appear in the following news item published at the time of the discovery of the operations of the institution. The following Associated Press item appeared in the Washington (D. C.) *Post* of 10 April 1945: "With the United States First Army in Germany, April 9 (AP).—A Nazi 'murder asylum' in which 20,000 political prisoners, Jews and slave laborers are estimated to have been put to death, has been uncovered by First Army troops. The murder factory was hidden in an insane asylum at Hadamar, near Limburg. German civil authorities themselves estimate that 15,000 victims were gassed and cremated and another 5000 killed by drugs and poison and buried in communal graves near the asylum. Those imprisoned for political reasons and foreign slave laborers who became too weak to work were put to death under the guise of 'mercy killings' after being systematically starved until doctors diagnosed them 'as hopelessly ill.' The establishment was operated under direct orders from Berlin, it was said, and at least 15,000 men, women and children were gassed and cremated by specially selected SS guards. After residents of Hadamar repeatedly complained of the stench of burning bodies and gas, and the Bishop of Muenster had written a protesting letter, the Nazis switched from gas to hypodermic injections and from cremation to mass burial to do away with the last 5000 'euthenasia' cases. Three Germans who ran the asylum—a 70-year-old doctor, a 45-year-old chief

It was established that "the cause of death was the injection of excessive doses of narcotic drugs which are not specifics for treatment of respiratory diseases." Though he never saw the law which was purported to have ordered the deaths, Klein gave the orders for the injections.

The Trial. The charge was "violation of international law," in that "Alfons Klein, Adolf Wahlmann, Heinrich Ruoff, Karl Willig, Adolf Merkle, Irmgard Huber, and Philipp Blum, acting jointly and in pursuance of a common intent, and acting for and on behalf of the then German Reich, did, from on or about 1 July 1944 to on or about 1 April 1945, at Hadamar, Germany, willfully, deliberately, and wrongfully, aid, abet, and participate in the killing of human beings of Polish and Russian nationality, their exact names and number being unknown but aggregating in excess of 400, and who were then and there confined by the then German Reich as an exercise of belligerent control."

The defenses were (a) that these individuals were incurably ill from tuberculosis; (b) that the defendants acted pursuant to a Nazi decree requiring that incurables should be put to death; (c) that they acted under the orders of a *Gauleiter*; and (d) that if they had refused to carry out the orders, they themselves would become concentration camp victims.¹¹

woman's nurse and a middle-aged chief warden—were arrested. (The German physician and his nurse, said the United Press, admitted they killed the victims by injecting a powerful poison directly into their hearts. 'The Gestapo ordered their deaths,' the physician said. 'They said the people were mentally ill.' Death books were found hidden in the wine cellar. 'Profession unknown. Nationality unknown,' is written after each name.) Terror was added to the macabre place by 300 crazed inmates who were allowed to run free in the awesome underground dungeons. 'Nobody would believe it,' said one investigator. 'It had underground chambers with dripping water, bats flying around and little crazy men jumping out at you at every step. . . . The director was a big tall Nazi surgeon, about 70 years old, a graduate of Heidelberg with sabre scars on his face. I never saw a tougher looking man in my life. The chief nurse—her job was to put the death needle into women patients—was about 6 feet tall and built like a football player. She was as ugly as a witch. The head keeper showed us 481 graves in the cemetery. There were three fresh, empty graves and when we asked him about them he said, "we always keep three graves ahead." When we first walked through, the insane inmates, laughing and screaming, followed us around in packs. There were dwarfs and stupid giants, but all seemed harmless. After their 10,000th killing, the SS men had a drinking orgy. They cleaned out the skulls of of some of their victims and used them as drinking cups.' The officer said some of the victims were 'young children who were half Jews.' The director carried out to the letter the legal principles set down by the Nazi euthanasia law that the victims be diagnosed by a reputable physician as 'incurably ill.' Under the Nazi Party starvation technique this only required the interval of time necessary for the ailing workers to break down from lack of food. Confronted by the testimony on the operations of his 'murder factory,' the surgeon only replied: 'I have always been a doctor of honor.'"

¹¹ Though the United Nations War Crimes Commission Report does not refer to it, an amusing footnote on this case, which is apparently factually accurate, appeared in *The New Yorker*: "In Wiesbaden, the other day, seven Germans went on trial for the wholesale murder of some slave workers—Poles and Russians, mostly, who had been put

In his closing statement Klein said that the killing of the Poles and Russians could not be considered "violations of international law," because it would have been cruel to have "let them live longer."

Jurisdiction. In the official commentary on the case the following statement is made:

It was established in the proceedings that the victims were Polish and Soviet nationals, but nothing was said as to whether they had been inhabitants of German-occupied Soviet and Polish territory; deported for labour into Germany. The Military Commission was, of course, in a position to take judicial notice of the fact hundreds of thousands of Soviet and Polish citizens from occupied territory had been compulsorily deported to Germany for work. This being so, it was obvious that this was a war measure and the murdering of these deported alien nationals a war crime.

Because of notions of territorial jurisdiction, it is thought by some individuals that, although a State may punish war criminals for offenses committed against its own armed forces during military operations, it may not punish an offender when the victim of a criminal act was not a member of its forces, if the crime was committed in a place over which, at the time of the act, the punishing State did not have that solidified *de facto* control akin to sovereignty which is denominated as military occupation—that is, in terms of Article 42 of the 1907 Hague Regulations, the degree of control which exists when the authority of the hostile army has actually been established and can be exercised. No United States national was among those killed at Hadamar, and when the crimes took place the territory was not under United States control. To the issue of the competency of the Commission in view of these facts, the Commission held that it had jurisdiction. The *Notes on the Case* state in this connection:

The following reasons sustaining the Commission's jurisdiction can be adduced: (a) the general doctrine recently expounded and called "universality of jurisdiction over war crimes,"¹² which has the sup-

to death for reasons which suited Germany at that particular moment. The trial was conducted by United States officers. According to an account we read of it in the [*New York*] *Times*, the defense attorney, an American captain, challenged the legal basis of the trial and quoted *The New Yorker* to support his argument." (*The New Yorker*, 20 Oct. 1945, p. 19.)

¹² This reference is to the doctrine expounded by the present writer. It was put forward first in the form of a memorandum made available to the United Nations War Crimes Commission in the autumn of 1944. At the suggestion and with the personal encouragement of Sir Cecil Hurst, then Chairman of the United Nations War Crimes Commission, that paper was expanded in London and Washington during the winter of 1944-1945. The following spring the ribbon copy of this larger paper was turned over to Mr. Justice Jackson's staff, and a carbon copy used for its publication in the June issue of the *California Law Review*—"Universality of Jurisdiction Over War Crimes," 33 *Calif. L. Rev.* 177-218 (1945). The doctrine set forth may be summarized by the following excerpts: "This paper is concerned with the question whether,

port of the United Nations War Crimes Commission and according to which every independent State, has, under International Law, jurisdiction to punish not only pirates but also war criminals in its custody, regardless of the nationality of the victim or of the place where the offence was committed, particularly where, for some reason, the criminal would otherwise go unpunished. . . .¹³

Sentences. All seven defendants were found guilty. Director Klein and male nurses Ruoff and Willig were sentenced to be hanged, Dr. Wahlmann to life imprisonment. Merkle, Blum, and the chief female nurse, Huber, received prison sentences, respectively, for 35, 30, and 25 years. All sentences were put into execution.

Variations on Scapa Flow

The fifth case arose out of the scuttling of German U-boats in violation of the Instrument of Surrender of 4 May 1945. It was agreed in that document that all German vessels would be handed over to the British Command, and that hostilities were to cease on land, sea, and in the air on 5 May 1945. Shortly after the German High Command had signed this document, early on 5 May, a secret order was issued by the German Naval Command using the code word "Rainbow" which meant to scuttle all U-boats. The order was cancelled later that morning. Despite this cancellation there was much discussion in German submarine circles as to whether or not the latest type U-boats should be scuttled. The next night

under international law, a belligerent State has jurisdiction to punish an enemy war criminal in its custody when the victim of the war crime was a national of another State and the offense took place outside of territory under control of the punishing State. . . . The origin of jurisdiction over the war criminal must be sought in the ancient practice of brigandage, in its relations to military operations and occupation . . . brigands have been classed with pirates from at least the sixteenth century. . . . The legal consequences of acts of brigandage and of piracy, so far as concerns jurisdiction, were the same. . . . In both situations there is, broadly speaking, a lack of any adequate judicial system operating on the spot where the crime takes place—in the case of piracy it is because the acts are on the high seas and in the case of war crimes because of a chaotic condition or irresponsible leadership in time of war. . . . It is clear that, under international law, every independent State has jurisdiction to punish war criminals in its custody regardless of the nationality of the victim, the time it entered the war, or the place where the offense was committed."

For uses of this paper in connection with Nuremberg, see Dept. of State Bulletin, June 10, 1945, pp. 1071 at 1075, and "Trial of War Criminals" (Dept. of State Publication No. 2420, pp. 6, 7, 8).

¹³ P. 53. Similar jurisdictional questions were involved in three other cases reported in the *Law Reports*: *Almelo* (p. 42), *Peleus* (p. 13), and *Zyklon B* (p. 108). The relevant Notes on the Cases contain similar comments; e.g., on the *Zyklon B* case, the language is: "(a) the general doctrine called Universality of Jurisdiction over War Crimes, under which every independent State has in International Law jurisdiction to punish pirates and war criminals in its custody regardless of the nationality of the victim or the place where the offence was committed . . ." (p. 108).

the defendant, Lieutenant Gerhard Grumpelt (with one Lorenz, an Obermaschinist), went aboard and scuttled two of the newest type of U-boats. He did it, he said, in order to deprive the Allies of new information concerning the use of the very latest type.

The Prosecution argued that it was a war crime for a member of the armed forces of the vanquished nation to break the terms of a surrender or armistice. Defense counsel argued that, having received the code order, Grumpelt had a clear duty to scuttle the boats. While not disputing that the scuttling was a violation of law, the defense counsel asserted that the prosecution had not met the burden of proving that Grumpelt, when scuttling the boats, knew either of the "cease fire" order or of the terms of surrender. This question of knowledge was the essential factual issue of the case.

Grumpelt was found guilty. His seven-year sentence was reduced to five years by the confirming authority.

Japanese Murder of American Fliers

Case No. 6 describes the trial of five Japanese naval officers ranging from a Rear Admiral to a Warrant Officer. In February 1944, three American airmen were forced to land near Jaluit Atoll in the Marshall Islands. They were captured and taken to Emidj Island, a Japanese naval headquarters which was under the command of a Rear Admiral Masuda. Pursuant to Masuda's order the airmen were shot without trial. The defendants, other than Masuda, were involved in carrying out the order. Late in 1945, after the United States had captured the area, the United States naval commander of the Marshalls-Gilberts Area ordered the setting up of a Military Commission for the trial of war crimes at the United States Naval Air Base at Kwajalein Island. The five Japanese officers were charged with murder. The specification is interesting from several points of view. It runs that the defendants

did, on or about 10th March, 1944, on the Island of Aineman, Jaluit Atoll, Marshall Islands, at a time when a state of war existed between the United States of America and the Japanese Empire, wilfully, feloniously, with malice aforethought, without justifiable cause, and without trial or other due process, assault and kill, by shooting and stabbing to death, three American fliers, then and there attached to the armed forces of the United States of America, and then and there captured and unarmed prisoners of war in the custody of the said accused, all in violation of the dignity of the United States of America, the international rules of warfare and the moral standards of civilized society.¹⁴

¹⁴ As originally drawn, the specification contained the word "unlawfully" instead of "wilfully."

Objection was made to the phrase "moral standards of civilized society." It was asserted to be non-legal and improper. The objection was overruled.

The prosecution relied upon Article 2 of the 1929 Geneva Prisoners of War Convention¹⁵ and on Article 23 (c) of the 1907 Hague Convention, which provides: "It is especially [notamment] forbidden . . . to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion."

Superior Orders: Important Variation. There is in this case an interesting and perhaps noteworthy variation of the familiar defense of superior orders. One of the defense counsel was a Lieutenant Commander in the Japanese Navy. Apparently because there was no exception in Japanese military law permitting disobedience of illegal orders, defense counsel asserted that the Japanese forces were exceptional among the world's armed forces. Testifying concerning the absolute discipline and obedience which was required of the Japanese soldier, he quoted an Imperial Rescript which, as translated, ran: "Subordinates should have the idea that the orders from their superiors are nothing but the orders personally from His Majesty the Emperor." Accordingly, he asserted that it was improper to apply "the liberal and individualistic ideas which rule usual societies unmodified to [sic] this totalistic and absolutistic military society." Here the Japanese Imperial Rescript was in conflict with the international rule. The international law was applied. This decision is perhaps the most recent case in which national law has been held subordinate to international.

A possible mitigating factor in this case arises from the fact that, even though the executioners were very junior officers, they requested to be relieved of the task, whereupon Masuda himself, a man of strong will, again emphatically ordered them to do so. Three of the accused were found guilty and sentenced to be hanged. The fourth was sentenced to ten years' imprisonment. Masuda was not among those sentenced, his case having been dropped. Confessing that he had ordered the killing of the airmen, Masuda had committed suicide before the trial.

German Shooting of Prisoners of War

As its legal basis is the same as that found in several other cases reported, the seventh case can be disposed of summarily. It reports the trial of Master Sergeant Karl Amberger. During a bombing of an air field near Dreierwalde, Germany, on 21 March 1945, five allied airmen, obliged to bale out, were captured. Late the next day Sergeant Amberger and two other German N.C.O.'s marched the fliers away from the airport. After traveling about a mile and a half, the detachment left the road and fol-

¹⁵ For text see below, text related to footnote 16.

lowed a path leading to a wooded area. Suddenly and wholly unprovoked, all members of the escort opened fire upon and killed all the prisoners of war except one, an Australian Flight-Lieutenant named Berick. Berick, though wounded, managed to escape. The evidence established that the airmen had made no attempt to escape before the shooting. Amberger was sentenced to be hanged. The sentence was executed on 15 May 1946.

Lynching of Prisoners of War

Case No. 8 reports the trial of five German civilians and two members of the German armed forces for the lynching of British aviators in the city of Essen. The provisions of Article 2 of the Geneva Prisoners of War Convention of 1929 may helpfully be noted before setting forth the facts:

Prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them. They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity. Measures of reprisals against them are prohibited.¹⁶

Three captured British airmen had been delivered to a military unit commanded by Captain Erich Heyer. As a sort of public proclamation, given in front of the barracks where a crowd had assembled, Heyer in a loud voice announced that he was turning over the airmen to an NCO and a private with instructions to escort them through the streets "to the nearest Luftwaffe unit for interrogation." There was some testimony from German witnesses that Heyer had also said that the airmen ought to be shot. Be that as it may, it was established that Heyer gave the escorting enlisted men a secret order not to interfere with the crowd in any way if any of its members molested the prisoners. The escort marched the prisoners along one of the principal streets. The crowd grew. Members of it started hitting the prisoners, throwing stones at them, and so on. A shot wounded one of the fliers in the head. Upon reaching a bridge, the airmen were thrown off, one being killed in the fall. The others thereafter were killed by members of the crowd through shooting, beating, or kicking.

The prosecutor, with commendable fairness, reminded the tribunal that "if it was not satisfied beyond a reasonable doubt that he [Heyer] had incited the crowd to lynch these airmen, he was then entitled to acquittal." He added, however, that "if the Court was satisfied that he [Heyer] did in fact say these people were to be shot, and did in fact incite the crowd to kill the airmen, then, in the submission of the Prosecution, he was guilty." On the assumption that the evidence established his guilt, the prosecutor pointed the Court to the British rule that an instigator may be a principal though not present at the time the crime is committed. He argued that,

¹⁶ 47 Stat. 2021, 2031; 4 Malloy 5224, 5229.

though Heyer struck no blow, he was as responsible, "if not more responsible, for the deaths of the three men as anyone else concerned." With regard to Private Koenen who was a member of the escort, the Prosecutor took the position that, "as the representative of the Power which had taken the airmen prisoners, [he] had the duty not only to prevent them from escaping but also of seeing that they were not molested." He could not merely stand by as he did, even though ordered to do so, without being "concerned in the killing." The position of the Prosecution was that every individual who "voluntarily took aggressive action" against any one of the airmen was "criminally responsible for the deaths of the three men."

Of the five civilian defendants, the guilt of two was not established beyond a reasonable doubt. Accordingly, they were acquitted. All members of the crowd convicted had "taken part in the ill-treatment." One civilian was sentenced to hang, another to imprisonment for life, and a third to ten years' imprisonment. Heyer was sentenced to be hanged, and was hanged on 8 March 1946. Koenen was sentenced to five years' imprisonment. The shortness of this sentence was presumably due partly to Heyer's order to Koenen and partly to Koenen's inferior rating. It is interesting and probably significant that neither Heyer nor Koenen set up a plea of superior orders.

Poison Gas-Chamber Murders

The last trial reported is the Zyklon B gas-chamber case, in which civilian officials of a firm of suppliers of poison gas were tried by a British Military Court in Hamburg in March 1946 on a charge that furnishing such gas, knowing that it was to be used to kill inmates of concentration camps, was a war crime.

The firm of Tesch and Stabenow was an established distributor of certain types of gas and disinfecting equipment. It trained and supplied technicians to carry out gassing operations. Before the war it carried on such operations as disinfecting ships in port and buildings after contagious diseases. A legitimate war-time use for this type of gassing developed—the extermination of lice. As a distributor Tesch and Stabenow had an exclusive selling agency east of the Elbe River for Zyklon B, a highly dangerous poison gas consisting of 99 per cent prussic acid. From 1941 to 1945 this firm sold vast quantities of Zyklon B to the largest concentration camps in Eastern Germany and occupied Poland, where extermination of human beings on a vast scale was taking place. "Four and a half million were exterminated by the use of Zyklon B" in Poland in the Auschwitz camp alone. In addition to Poles and Jews, these camps contained nationals from most of the occupied territories in Europe, from neutral countries, and even "from the United States."

The principal officials of the firm became aware of the real purpose of the greatly increased quantities of Zyklon B gas being sold. On this point, the *Report* states that, in a travel report,

Tesch recorded an interview with leading members of the Wehrmacht, during which he was told that the burial, after shooting, of Jews in increasing numbers was proving more and more unhygienic, and that it was proposed to kill them with prussic acid. Dr. Tesch, when asked for his views, had proposed to use the same method, involving the release of prussic acid gas in an enclosed space, as was used in the extermination of vermin. He undertook to train the SS men in this new method of killing human beings.

The firm supplied up to nearly two tons per month to Auschwitz.

The theory of the Prosecution's case-in-chief was "that knowingly to supply a commodity to a branch of the state which was using that commodity for the mass extermination of Allied civilian nationals, was a war crime, and that the people who did it were war criminals for putting the means to commit the crime into the hands of those who actually carried it out." They were accessories before the fact of the gas-chamber murders. As a specific legal basis, counsel pointed to Article 46 of the Hague Regulations of 1907, "to which the German government and Great Britain were both parties." Article 46 provides that "the lives of persons" and the rights and honor of the family "must be respected."¹⁷

Dr. Tesch, the owner, and his principal executive, one Weinbacher, were sentenced to death by hanging. The sentences were carried into effect. A third accused was acquitted apparently on the ground that he held a subordinate position and that there was reasonable doubt that he knowingly did any act as a principal or accessory.

Conclusion

In conclusion, a few passing observations may be made.

1. During World War II, when thinking began about an inter-Allied tribunal to try Hitler, *et al*, there was some concern among Allied military law officers when researches failed to turn up a precedent where a mixed inter-Allied military tribunal had actually functioned.¹⁸ The following statement in Annex I of the *Law Reports* is noteworthy:

That the appointment of Allied members of the Military Courts is not compulsory is strikingly demonstrated by the trial by a British Military Court at Singapore of W/O Tomono Shimio of the Japanese Army. In that case the accused was charged, found guilty and

¹⁷ 36 *Stat.* 2277, 2295, 2306-2307; 2 *Malloy* 2269, 2281, 2289.

¹⁸ The present writer has since come across an instance where such a mixed tribunal was used—at Archangel immediately after World War I. See Leonid I. Strakhovsky, *Intervention at Archangel, The Story of Allied Intervention and Russian Counter-Revolution in North Russia, 1918-1920*, Princeton, 1944, p. 46.

sentenced to death by hanging, by a Court consisting of British officers only, for having unlawfully killed American prisoners of war at Saigon, French Indo-China. The *locus delicti commissi* was French territory, the victims were United States nationals.

In two of the cases in the *Law Reports*, the *Peleus* (Case No. 1) and the trial of the Pilot Hood murders (Case No. 3), Greek and Dutch military officers, respectively, served on British tribunals.

2. Coming upon a reference to a basic document in reading the text, one finds the usual numerical footnote designation. In reading the relevant footnote, the reader often finds: "See Annex —, page —." ¹⁹ Turning to that page, one finds only further discussion. The document is not there. It is to be regretted that the basic documents governing these trials, which are often referred to both in the body of the *Reports* and in the *Notes*, were not set out *verbatim* in an Annex. Had they been, the utility of the volume would have been greatly increased. Perhaps this omission will be corrected in subsequent volumes.

3. Finally, it has been seen that the concern of the *Law Reports* is with violations of that part of international law known as the laws and customs of war. Unlike the new development at Nuremberg, those trying or deciding the cases appearing in the *Law Reports* did not have to concern themselves with such overwhelming matters as were involved in the trials for "planning, preparation, initiation, or waging of a war of aggression"; or, for example, with the soundness of such propositions as Gillin's, that a "crime" is "an act which is believed to be socially harmful by a group of people which has the power to enforce its beliefs." ²⁰ By sharp contrast, in the cases here reported precedents were available going back to ancient Greece and Rome. Ever since that time, contrary to popular impression, individuals have been held responsible for savage acts committed by them in the course of war. The history of war is replete with proceedings and precedents holding such "individuals criminally and feloniously liable for acts committed during the progress of armed conflict between nations." These new *Law Reports* are the latest addition to a long bibliography on this subject. Among other contributions, the publication of the volume under review, to the extent it is read, will assist in dispelling misconceptions and confusions concerning the current trials of war criminals.

¹⁹ See, for example, pages 22 and 85 of the *Law Reports*, note 1 in each case.

²⁰ *Criminology and Penology* (1926), p. 13.

LIQUIDATION OF LEAGUE OF NATIONS FUNCTIONS

BY DENYS P. MYERS *

Introduction

The Board of Liquidation of the League of Nations closed its accounts as of July 31, 1947, completing the dissolution of the institution established by the Covenant which had been effect since January 10, 1920. The dissolution itself—the cessation of all activities except for liquidation purposes—had been in effect since April 19, 1946, the day following the adjournment of the 21st ordinary session of the Assembly. The combined dissolution and liquidation of the League of Nations was the first instance in history of the complete disappearance of a major multilateral organization and the assumption of its essential functions by successors. An examination of the phoenix-like process actually carried out will throw much light upon sundry problems of succession in the multilateral activities of states.

The League of Nations was destined to be superseded by the United Nations from the time of the Dumbarton Oaks Conversations, August 21–October 7, 1944. The Conversations at Dumbarton Oaks produced a new set of proposals without consideration of their relation to the League of Nations except the understanding that the participants would study the problems involved in transferring functions performed by the League of Nations to the United Nations.

The United Nations Conference on International Organization at San Francisco did not advance beyond that point, except that the Charter's provisions concerning the Economic and Social Council more definitely embraced the full range of such activities already developed by the League of Nations and the added Trusteeship Council positively envisaged taking over and developing the mandatory functions of the old organization. The conference refined the Statute of the Permanent Court of International Justice into that of the Statute of the International Court of Justice, which was more closely integrated with the United Nations. The earlier Statute was set up by a protocol arising out of Article 14 of the Covenant of the League of Nations; the new one became an annex to the Charter, the Court was made a "principal organ" of the United Nations, but the provisions for its relationship to the mechanism and functioning of the new Organiza-

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tion were not essentially changed. Registration and publication of treaties were continued.

Of the 50 states represented at the San Francisco conference, 32 were members of the League of Nations,¹ and 12 had previously been members.² Of the 6 others³ only the United States might have been a League member. The current members of the League of Nations not represented at the conference were 13 in number,⁴ the political status of some not being entirely certain.

Everyone at San Francisco recognized that the League of Nations was scheduled to go out of existence with the advent of the United Nations, but the conference did not feel under the necessity of itself facing the issue. Since it included a majority of the members of the League the conference was in a position to make provision for the inevitable succession along with its preparations to get the United Nations going. The Interim Arrangements⁵ concluded by the Governments represented at the United Nations Conference on International Organization, signed and effective June 26, 1945, covered that ground. It established a Preparatory Commission of the United Nations, with an Executive Committee of 14, and provided:

4. The Commission shall:

- (c) Formulate recommendations concerning the possible transfer of certain functions, activities, and assets of the League of Nations which it may be considered desirable for the new Organization to take over on terms to be arranged.

The Machinery of Liquidation

An outline of the mechanisms employed in the process of planning and effecting the liquidation of the League of Nations and the transfer of its functions, powers, activities, and assets at this point will simplify the presentation by subject and dispense with a comprehensive chronological account of proceedings. Six main bodies dealt with the matter:

¹ Argentina, Australia, Belgium, Bolivia, Canada, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Ethiopia, France, Greece, India, Iran, Iraq, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, Poland, Turkey, Union of South Africa, United Kingdom, Uruguay, Yugoslavia.

² Brazil, Chile, Costa Rica, Guatemala, Haiti, Honduras, Nicaragua, Paraguay, Peru, El Salvador, Soviet Union, Venezuela.

³ Byelorussia, Lebanon, Saudi Arabia, Syria, the Ukrainian Soviet Socialist Republic and the United States.

⁴ Afghanistan, Albania, Bulgaria, Estonia, Finland, Ireland, Latvia, Lithuania, Poland, Portugal, Siam, Sweden, Switzerland.

⁵ *Executive Agreement Series* No. 461.

Executive Committee, Preparatory Commission of the United Nations, London, August 16–November 24, 1945, consisting of representatives of Australia, Brazil, Canada, Chile, China, Czechoslovakia, France, Iran, Mexico, the Netherlands, Soviet Union, United Kingdom, United States and Yugoslavia. Its Committee 9 prepared Chapter IX, The League of Nations, of the Report of the Executive Committee, in 13 meetings, August 31–October 10, 1945.

Preparatory Commission of the United Nations, London, November 24–December 24, 1945, consisting of representatives of the 51 members of the United Nations. Committee 7 in seven meetings, November 27–December 17, prepared Chapter XI, the League of Nations, of the Report of the Preparatory Commission. A special interim Committee on Transfer of League of Nations Assets, consisting of representatives of Chile, China, France, Poland, South Africa, Soviet Union, United Kingdom and United States, was set up December 18 to discuss with the League of Nations Supervisory Commission a common plan for the transfer of the assets of the League of Nations; its report went to the *ad hoc* Committee on the League of Nations, General Assembly.

General Assembly of the United Nations, first session, first part, January 10–February 14, 1946, consisting of all members of the United Nations, on February 12, 1946, adopted the report of its *ad hoc* Committee on the League of Nations which sat in two meetings, January 30–February 1, 1946. It created the Negotiating Committee on League of Nations Assets, consisting of representatives of Chile, China, France, Poland, South Africa, Soviet Union, United Kingdom and United States to confer with League and Swiss authorities on matters arising out of the transfers envisaged in the Common Plan included in the report of the *ad hoc* committee to the General Assembly and approved by the resolution of February 12.

Assembly of the League of Nations, 21st ordinary session, April 8–18, 1946, consisting of representatives of 44 members, acting upon reports of Committees on General Questions and on Financial and Administrative Questions. In addition to approval of the Common Plan for the transfer of League of Nations assets which had been worked out by the Supervisory Commission with the United Nations committee, the Assembly adopted 12 resolutions disposing of League activities.

Board of Liquidation, League of Nations, April 23, 1946–July 31, 1947, consisting of nine persons, nationals of Bolivia, China, Czechoslovakia, France, India, Norway, South Africa, Switzerland and the United Kingdom.

Secretariat of the United Nations, through which agreements, protocols and other arrangements for transfer of assets, activities and functions were concluded with the Board of Liquidation and transmitted for appropriate action to organs of the United Nations or specialized agencies.

Development of United Nations Position

The Preparatory Commission of the United Nations, created by the Interim Arrangements of June 26, 1945, met on the afternoon of that very day to confirm the plans. Its Executive Committee, composed of representatives of the Governments which provided the Executive Committee of the San Francisco Conference, was assigned to meet before the Charter came into force, and it convened at London six weeks after the conference ended. Of its tasks the recommendations concerning taking over from the League of Nations appeared to be most complex. The Economic and Social Council would surely work extensively in the same fields that the League of Nations had occupied,⁶ and the experience of the League Secretariat afforded precedents for organizing the new Secretariat. Throughout international relations functions, activities, powers and duties had been assigned to the League under several hundred multilateral and bilateral treaties. On the other hand, the "political" functions of the League—roughly speaking, the activities evolving from articles 8-20 of the Covenant—were entirely superseded by the Charter's chapters on the Security Council and the General Assembly. Those activities had ceased, but the non-political functions which had grown up under article 23 of the Covenant were continuing at Geneva, London, Washington and Princeton and desirably were neither to be interrupted nor diminished. Running through every phase of the problem was the financial element.

When Committee 9 of the Executive Committee of the Preparatory Commission of the United Nations met, there was considerable factual information available to it. The League in 1944 and 1945 had issued three publications with a view to the transfer of its powers and duties,⁷ and had

⁶ The Economic and Social Council of the United Nations was built upon the essential idea which in the last active days of the League of Nations took form in the Central Committee for Economic and Social Questions set up in accordance with the Bruce report (League of Nations, *The Development of International Cooperation in Economic and Social Affairs; Report of the Special Committee (A.23.1939)*). That committee aimed to consolidate and coordinate the "technical problems" which the ramifying activities of the League had taken on. These so-called "economic and social questions" in the League experience embraced "economic questions—including *inter alia*, commercial, industrial and agricultural questions—financial and transport, demographic and emigration questions, questions of public health and hygiene, housing and nutrition, as well as the control of the traffic in drugs, prostitution, child welfare and other problems of social dangers and social well-being." A Central Committee of 24 representatives of states designated by the League Assembly was ready to direct all these activities in lieu of the Council, when the League's work was interrupted in 1940.

⁷ Powers and Duties attributed to the League of Nations by International Treaties (O.S.M.3.1944.V.1); List of Conventions with Indication of the Relevant Articles conferring Powers on the Organs of the League of Nations (O.100.M.100.1945.V.1);

continued the annual reports of the Secretary-General, the budget issues, the Audited Accounts and periodic reports of the Supervisory Commission. The United Kingdom had prepared a comprehensive study on the subject, and other governments had given it detailed attention.⁸ League of Nations officials were available for consultation during the early stages of the United Nations deliberations in which initial plans for transfer were elaborated.

Committee 9 of the Executive Committee agreed at the outset that it could not, under the terms of reference of the Interim Arrangements, concern itself with devising the mode of dissolving the League of Nations, which was a matter for the League itself.

The task of Committee 9 of the Executive Committee was to sort out of the non-political and technical functions, activities and assets of the League of Nations those activities which the United Nations should take over, whether they were instituted by decisions of the League's organs or had been entrusted to the League by separate treaties. Certain matters were eliminated from immediate consideration: refugees, international bureaus, the Intellectual Cooperation Organization, and special funds connected with the League structure. Transfers of functions, activities and assets were possible under either an *en bloc* (or *in toto*) formula or under a selective formula. *En bloc* transfer would result in the United Nations taking over the functions, activities, or assets from the League of Nations as they stood, leaving the United Nations to discontinue, modify, or liquidate any part in the light of its own policies and conditions. Selective transfer was contemplated as authorizing the appropriate organs of the United Nations to choose the functions, activities and assets to be assumed, leaving to the League of Nations the task of liquidating anything not taken over.⁹ The *en bloc* formula prevailed and the recommendation of the Executive Committee, with its accompanying explanatory note, reflected that principle:¹⁰

1. That the functions, activities and assets of the League of Nations be transferred to the United Nations with such exceptions and qualifi-

The Committees of the League of Nations: Classified List and Essential Facts (C.99.M.99.1945.V.2).

In addition the Twenty-First List of Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the Auspices of the League of Nations, July 10, 1944, presented a general view of the "legislative" work of the League.

⁸ British, Chinese and French documents submitted to the Executive Committee are identified in its papers as PC/EX/LN 2, 3, 8, and 10.

⁹ See Henry Reiff, *Transition from League of Nations to United Nations*, 4-8 (Department of State, Publication 2542, *United States-United Nations Information Series* No. 5).

¹⁰ Report of the Executive Committee to the Preparatory Commission of the United Nations, 108.

cations as are made in the report referred to above, and without prejudice to such action as the United Nations may subsequently take with the understanding that the contemplated transfer does not include the political functions of the League, which have in fact already ceased, but solely the technical and non-political functions.

Chapter IX of the Executive Committee's report continued in three sections to examine the various phases of the League's functions, activities and assets and sketched the position which the Preparatory Commission should recommend with respect to each. A note attached to the general paragraph applied the reasoning of the committee to some specific problems not positively dealt with in the body of the report:

The Committee recommends that no political questions should be included in the transfer. It makes no recommendations to transfer the activities concerning refugees, mandates or international bureaux. The contemplated transfer will not include transfer of personnel. Transfer of assets and liabilities should imply neither profit nor loss for the United Nations. The problem of separating the finances of the International Labor Organization from those of the League is left for later consideration.

The transfer of economic activities is limited to such work in this field as the United Nations might wish to continue; that of the health activities will be subject to any decisions made in the future regarding a new health organization; and that of the social activities would take place with the understanding that the question as a whole will have to be referred to the competent organ of the United Nations. The transfer of functions arising from treaties is contemplated only as far as is possible and desirable.

Committee 7 (League of Nations) of the Preparatory Commission used the Report of the Executive Committee as its point of departure and devoted itself to formulating specific recommendations from it for the General Assembly. At the outset it decided to envisage the assumption of functions, powers and activities, thus implying mutuality, but not the transfer of assets, thus implying that the United Nations would receive what the League of Nations turned over. With this distinction settled, the committee proceeded to consider the two subjects independently.

The Soviet delegate, who had voted against recommendation 1 of the Executive Committee's report (quoted above), proposed on November 28 "that the Economic and Social Council should consider which of its organs might exercise certain non-political functions formerly performed by the League of Nations."¹¹ He held that no general distinction could be drawn between political and non-political functions and that each particular function should be given separate, careful and concrete consideration before a decision of the United Nations was taken.¹² Polish amendments including

¹¹ PC/LN/4. The papers of Committee 7 bear this symbol, the records of meetings being published as supplements to the Journal of the Preparatory Commission.

¹² PC/LN/5.

"activities" and "technical" functions¹³ were accepted by the Soviet delegate, and a subcommittee of the delegates of Egypt, Poland, the Soviet Union and the United Kingdom was appointed to prepare a text.

This drafting committee brought in a comprehensive report¹⁴ on the "assumption of certain functions, powers and activities of the League of Nations," which was based on the detailed conclusions of the Executive Committee's report. The Executive Committee's chosen formula of *en bloc* transfer, to which its Report contained many exceptions, was still further watered down in Committee 7's report as adopted on December 18, 1945. The survey by the Economic and Social Council was to determine for the decision of the General Assembly which functions and activities should be assumed with modifications "on or before the dissolution of the League" by the United Nations or specialized agencies; and it asked for continuity, after dissolution of the League, for the Economic, Financial and Transit Department, and the health and opium secretariats. The report, in addition to a recommendation concerning the transfer of the assets of the League, was in two sections, the first dealing with the functions and powers belonging to the League of Nations under international agreements, which was a carry-over from the Executive Committee; and the second dealing with the non-political functions and activities other than those mentioned in Section 1. The report was believed to cover all parts of the Report by the Executive Committee, except that relating to loans issued with the assistance of the League, which any interested government could bring before the Economic and Social Council.¹⁵

The Common Plan

When the Charter of the United Nations came into force on October 24, 1945, during the session of the Executive Committee of the Preparatory Commission, the League of Nations was in the hands of the Acting Secretary-General,¹⁶ Sean Lester, who succeeded Joseph Avenol on August 31, 1940, "at a time of great confusion in the affairs of the Secretariat."¹⁷

¹³ PC/LN/6, with the discussion at the fourth meeting, PC/LN/7.

¹⁴ PC/LN/9, which was adopted December 18, 1945, as PO/12 and which became Chapter XI of the Report of the Preparatory Commission, 116.

¹⁵ The Executive Committee recommended that the appointment of trustees under the nine loan contracts made under the auspices of the League should be taken over by the United Nations. The Soviet and Polish delegates to Committee 7 objected in the committee, and the Report dismissed the matter with the reference mentioned. The paragraph was omitted when the Commission's Report was made into the report to the General Assembly (A/28). See, for a review of the loans, E/49 in Economic and Social Council, Official Records, 2d Session, 330.

¹⁶ The Assembly on April 18, 1946 appointed Mr. Lester Secretary-General retroactively as from September 1, 1940 (Records of the . . . 21st Ordinary Session of the Assembly, 277).

¹⁷ Records of the . . . 21st Ordinary Session of the Assembly, 114.

and the Supervisory Commission. The Assembly on September 30, 1938, had given the Secretary-General (and the Director of the International Labor Office for that Organization) discretionary power, "acting with the approval of the Supervisory Commission," to take "any exceptional administrative or financial measures or decisions which appear necessary" with "the same force and effect as if they had been taken by the Assembly."¹⁸ In December, 1939, the Assembly added to the special powers of the Supervisory Commission those normally exercised by the Council under the League's Financial Regulations.¹⁹ The Supervisory Commission realized its object to "preserve intact the structure of the League of Nations and to provide for the continued existence of each of its different institutions, even if financial exigencies compel a contraction in the scale of operations."²⁰ Carl J. Hambro (Norway) was chairman of the Supervisory Commission in 1939 and thereafter and had further authority in virtue of being president of the 20th session of the Assembly, which was only adjourned and not closed. In 1940 the commission coopted as a member Adolfo Costa du Rels (Bolivia), last president of the Council, who by the rules continued in office until the next session. The commission, which consisted of seven members in 1940, coopted new members during the war and consisted of ten members in 1946. The Assembly by resolution of April 18, 1946, took note of the commission's reports, approved and confirmed its decisions from 1940 to 1946 and expressed its warm appreciation for its work during that period.²¹

The chairman of the Supervisory Commission was in London during the session of the Executive Committee of the Preparatory Commission of the United Nations, which was advised of the plans of the League. The Secretary-General of the League on September 20, 1945, proposed in a telegram to the members of the League that the Supervisory Commission undertake the duty, which it was willing to assume, of formulating with the Executive Committee provisional terms of transfer of League functions, activities and assets to the United Nations; on these terms the Assembly would take final decisions, and post-Assembly responsibilities might be left to a competent body designated by the Assembly. The Supervisory Commission would adopt an emergency budget for 1946 and make other necessary steps. Replies were asked by October 5,²² and on October

¹⁸ Records of the 19th Ordinary Session of the Assembly, Plenary Meetings, 97, 140.

¹⁹ Records of the 20th Ordinary Session of the Assembly, Plenary Meetings, 27, 45.

²⁰ League of Nations, Report of the Supervisory Commission, 1943 (C.23.M.23.1943.X), quoted in Records of the . . . 21st Ordinary Session of the Assembly, 110. See Report on the Work of the League during the War (A.6.1946.1945.2), in general, and the list of publications at p. 149.

²¹ League of Nations, Records of the . . . 21st Ordinary Session of the Assembly, 60, 258, 279.

²² Same, 10.

15 the Executive Committee of the Preparatory Commission of the United Nations was informed that the Supervisory Commission as a competent organ had been appointed to represent the League in any preliminary discussions which might be required, the Assembly reserving to itself the right of final approval.²³ The Executive Committee in the five remaining weeks of its session took little advantage of this opportunity, but in its report suggested "that the Preparatory Commission should appoint a small Committee to discuss with the Supervisory Commission of the League of Nations the parallel measures that should be adopted by the League of Nations and the United Nations."²⁴

The Preparatory Commission on December 18, 1945, set up a committee consisting of one representative of Chile, China, France, Poland, South Africa, the Soviet Union, the United Kingdom and the United States of America to enter into discussion with the Supervisory Commission "for the purpose of establishing a common plan for the transfer of the assets of the United Nations on such terms as are considered just and convenient. This plan will be subject, so far as the United Nations is concerned, to approval by the General Assembly."²⁵ The committee was to consult representatives of the International Labor Organization on transfer questions which concerned it, and to have regard to the views of the Executive Committee on the transfer of the League archives, Library, assets and liabilities, and the Permanent Central Opium Board and Supervisory Body. The committee was recommended to submit the plan for approval to the General Assembly.

The Committee on Transfer of League Assets of the United Nations held on January 4-28, 1946, a series of seven meetings by itself and four meetings with the Supervisory Commission, together with the Secretary-General of the League, the Treasurer, Seymour Jacklin, and the Acting Director of the International Labor Office, Edward J. Phelan. The Supervisory Commission submitted drafts for discussion on the transfer of assets, the use by the International Labor Organization of the Assembly Hall and Library, the Judges' Pensions Fund, and inventories of the moveable assets of the League.²⁶

The negotiations produced the Common Plan for the Transfer of League of Nations Assets, which was presented to the League of Nations Committee of the General Assembly (first part of the first session) on February 1, 1946. That *ad hoc* committee, consisting of representatives of all members of the United Nations, approved the Plan as an annex to its report

²³ League of Nations, Report on the Work of the League of Nations during the War, 8 (A.6.1946.1945.2).

²⁴ Report of the Executive Committee of the Preparatory Commission of the United Nations, 109 (PC/EX/113 Rev. 1).

²⁵ Report of the Preparatory Commission of the United Nations, 118 (PC/20).

²⁶ The papers are in the United Nations series A/LA/W, nos. 4, 8, 9, and 11.

on League of Nations assets. The Plan was described to the committee as a settlement that was, as far as possible, a clean sweep excluding all questions that might lead to later complications, definite and final as regards financial aspects of the question, and "just and convenient," as instructed by the Preparatory Commission.

The League of Nations Committee of the General Assembly examined the Common Plan with the schedule of values to be transferred and two inventories without direct comment, but discussed the report of the Committee on Transfer of League of Nations Assets.²⁷ It spent most of the time at its single meeting in revising the Report of the Preparatory Commission into its own Assembly report, making only minor changes aside from the adaptation in the first two sections.²⁸ Section III of resolution 24 (I) of the General Assembly, February 12, 1946, approved the Common Plan:²⁹

The General Assembly, having considered the report of the Committee set up by the Preparatory Commission to discuss and establish with the Supervisory Commission of the League of Nations a common plan for the transfer of the assets of the League of Nations, approves of both the report of the Committee set up by the Preparatory Commission and of the common plan submitted by it.

The Supervisory Commission of the League of Nations made a report and transmitted the Common Plan to the Assembly,³⁰ which referred it to the Second (Finance) Committee. That committee spent most of its time reviewing and approving the reports of the Supervisory Commission. At its 101st session, April 5-10, the commission "endeavored to establish principles on which the distribution of the League assets will be based" and set down nine points in a scheme.³¹ The rapporteur of the Supervisory Commission presented the Scheme of Distribution on April 13, 1946, to the Second Committee, which approved it.³² The text was included textu-

²⁷ United Nations, *Official Records . . . of the General Assembly, League of Nations Committee . . .* 30 Jan.-1 Feb. 1946. The report of the committee (A/18) is printed at p. 11, with the Common Plan and its attachments annexed, including the inventories.

²⁸ The report of the League of Nations Committee is A/28, printed in *Official Records . . . of the General Assembly, Plenary Meetings . . . Verbatim Records*, 10 Jan.-14 Feb. 1946, 598. The approval, without debate, is at p. 401.

²⁹ United Nations, *Resolutions adopted by the General Assembly . . .* 10 Jan. to 14 Feb. 1946, 36 (A/64).

³⁰ *Records of the . . . 21st Ordinary Session of the Assembly*, 217. The report commented on the meaning of various paragraphs in consonance with the report to the General Assembly of the United Nations. Both sets of comments will be woven into the discussion of specific subjects in this paper.

³¹ Same, 176.

³² Same, 126.

ally in the report of the committee, the resolutions and decisions of which were approved by the Assembly on April 18.³³

Parallel to this action the United Kingdom introduced in the First Committee (General Questions) on April 12 a draft resolution for the dissolution of the League which was revised by both committees and approved unanimously by the Assembly on April 18 containing this paragraph:³⁴

The Assembly approves and directs that effect shall be given in the manner set out in the Report of the Finance Committee to the "Common Plan for the Transfer of League of Nations Assets," which was drawn up jointly by a United Nations Committee and the Supervisory Commission, acting respectively on behalf of the United Nations and the League of Nations, and was approved by the General Assembly of the United Nations on February 12, 1946.

Dissolution of the League

The Assembly of the League of Nations was convoked for its 21st and last session by the Secretary-General for April 8, 1946, at Geneva. The agenda consisted of 16 items, which included the "dissolution of the League" as the pivot on which all other items hung. At 11 A.M. President Carl J. Hambro (Norway) convened the sixth plenary meeting of the 20th session, which had adjourned on December 14, 1939, in order to close it. The 21st session's first plenary meeting met at noon and organized with 35 delegations present.³⁵ Aside from the unanimous election of Mr. Hambro as president, the proceedings followed the usual pattern, including the debate on the work of the League, which consisted of 22 impressive reviews of the League's record. The agenda was distributed to only two committees, the First (General Questions) and the Second (Finance).

The proceedings were as direct and smooth as could be conceived, in sharp contrast to the mental and legal flurries which had worried many officials and others as to how an international organization might be wound up and its estate inherited by another. There was not the slightest trace of a rump of League members which refused to go along with the majority, seeking to hold the Covenant in suspended animation indefinitely. Nor was there any effort to avoid the plain act of dissolution by hiding behind

³³ Same, 61-62. The passage of the report which was approved is at p. 266; the formal resolution at p. 280.

³⁴ Same, 63, 281; the original draft at p. 80.

³⁵ Same, 11. The members represented were Afghanistan, Argentine Republic, Australia, Belgium, Bolivia, Canada, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Greece, India, Iran, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Panama, Poland, Portugal, South Africa, Sweden, Switzerland, Turkey, United Kingdom, Yugoslavia. An observer of the Austrian Government was admitted by resolution April 12.

a dubious subterfuge of placing the Covenant in desuetude. No one attempted to invoke the doctrine of *rebus sic stantibus*.

Under the Covenant both the Assembly and Council might deal with any matter within the sphere of action of the League. The Council met last in December, 1939, when it was composed of representatives of France and the United Kingdom as permanent members and of the following non-permanent members, Belgium, Bolivia, China, Dominican Republic, Egypt, Finland, Greece, Iran, Peru, South Africa, Yugoslavia. The elective terms of all non-permanent members had expired by 1946 and their present tenure was technically due to the non-election of their successors.

The General Committee did not consider that a meeting of the Council was necessary but thought that the Assembly should make sure that it possessed authority to act upon any responsibilities normally falling within the competence of the Council. The General Committee recommended and the Assembly on April 12 adopted a resolution covering the point:³⁶

The Assembly, with the concurrence of all the Members of the Council which are represented at its present session, decides that, so far as is required, it will, during the present session, assume the functions falling within the competence of the Council.

The First Committee passed upon questions relating to the assumption of functions, powers and activities by the United Nations before taking up the pivotal matter of the dissolution of the League. The delegation of the United Kingdom on April 12³⁷ introduced the draft of a comprehensive resolution, which worked up proposals that had been submitted in advance to all members.³⁸ The unanimous vote of 34 states³⁹ in the final plenary meeting of April 18 gave effect to the following fundamental decision:

The Assembly of the League of Nations,

Considering that the Charter of the United Nations has created, for purposes of the same nature as those for which the League of Nations was established, an international organization known as the United Nations to which all States may be admitted as Members on the conditions prescribed by the Charter and to which the great majority of the Members of the League already belong;

³⁶ Same, 48; the report of the General Committee at p. 212.

³⁷ Same, 62; 281; the report at p. 253.

³⁸ Same, 82.

³⁹ The roll call recorded the affirmative votes of Afghanistan, Argentine Republic, Australia, Belgium, Bolivia, Canada, China, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Greece, India, Iran, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Sweden, Switzerland, Turkey, Union of South Africa, United Kingdom, Uruguay, Yugoslavia; Afghanistan, Finland, Ireland, Portugal, Sweden and Switzerland were the only states not members of the United Nations. The members of the League not present and voting were Albania, Bulgaria, Colombia, Estonia, Ethiopia, Iraq, Latvia, Liberia, Lithuania, Siam.

Desiring to promote, so far as lies in its power, the continuation, development and success of international cooperation in the new form adopted by the United Nations;

Considering that, since the new organization has now commenced to exercise its functions, the League of Nations may be dissolved; and

Considering that, under Article 3, paragraph 3, of the Covenant, the Assembly may deal at its meetings with any matter within the sphere of action of the League:

Adopts the following resolution:

Dissolution of the League of Nations

1. (1) With effect from the day following the close of the present session of the Assembly [*i.e.*, April 19], the League of Nations shall cease to exist except for the sole purpose of the liquidation of its affairs as provided in the present resolution.

(2) The liquidation shall be effected as rapidly as possible and the date of its completion shall be notified to all the Members by the Board of Liquidation provided for in paragraph 2.

21. On the completion of its task, the Board shall make and publish a report to the Governments of the Members of the League giving a full account of the measures which it has taken, and shall declare itself to be dissolved. On the dissolution of the Board, the liquidation shall be deemed to be complete and no further claims against the League shall be recognized.

It is legally significant that the Assembly dissolved the "League of Nations" and did not abrogate, denounce, declare null and void or otherwise pronounce on the status of the Covenant, which contains no provision for its cessation either in itself or as Part I of four treaties of peace. The machinery ceased to exist by decision of the whole membership speaking through its organ the Assembly which, constitutionally qualified to deal with matters "within the sphere of action," by corollary application decided on the permanent inaction of the League, as respects both organs and functions.⁴⁰ Cessation began the day after the decision, the lapse between decision and effect precluding a question of validity based on timing.

Transfers to and Assumptions by the United Nations

The general scheme for transmission of functions, powers and activities from the League of Nations to the United Nations was laid down in the Report by the Executive Committee to the Preparatory Commission of the United Nations. The Preparatory Commission's Report⁴¹ referred

⁴⁰ Compare the Roman law: *Obligaciones quae consensu contrahuntur contraria voluntate dissolvuntur* (Inst. 3, 29, 4).

⁴¹ A/28, Official Records of the General Assembly, Plenary Meetings . . . 10 Jan. to 14 Feb. 1946, 598.

the substance of those conclusions to the General Assembly, to which its League of Nations Committee summarized them in a resolution as United Nations policy. The resolution⁴² adopted by the General Assembly on February 12, 1946, recited in section I that it was, or might be, desirable that the United Nations should provide for the continuance of numerous functions after the dissolution of the League of Nations which it and its organs had exercised under various treaties, conventions, agreements and other instruments.

Noting that certain members of the United Nations, which were parties to some of the instruments and also members of the League of Nations, intended in the Assembly of the League to "move a resolution whereby the members of the League would, so far as this is necessary, assent and give effect to" them, the General Assembly laid down these conditions:

1. The General Assembly reserves the right to decide, after due examination, not to assume any particular function or power, and to determine which organ of the United Nations or which specialized agency brought into relationship with the United Nations should exercise each particular function or power assumed.

2. The General Assembly records that those Members of the United Nations which are parties to the instruments referred to above assent by this Resolution to the steps contemplated below and express their resolve to use their good offices to secure the cooperation of the other parties to the instruments so far as this may be necessary.

3. The General Assembly declares that the United Nations is willing, in principle and subject to the provisions of this Resolution and of the Charter of the United Nations, to assume the exercise of certain functions and powers previously entrusted to the League of Nations. . . .

The system of registration of treaties under article 18 of the Covenant was continued by article 102 of the Charter, and the General Assembly of the United Nations in a resolution⁴³ of February 10, 1946, provided for continuation of the League of Nations Treaty Series. In connection with that decision the resolution of February 12 contained this invitation:

The General Assembly declares that the United Nations is willing to accept the custody of the instruments and to charge the Secretariat of the United Nations with the task of performing for the parties the functions, pertaining to a secretariat, formerly entrusted to the League of Nations.

The preamble of that paragraph fairly described the functions which the League Secretariat had accumulated in 25 years:

The receipt of additional signatures and of instruments of ratification, accession and denunciation; receipt of notice of extension of the

⁴² Resolutions adopted by the General Assembly . . . 10 Jan. to 14 Feb. 1946, 35 (A/64).

⁴³ Resolutions adopted by the General Assembly . . . 10 Jan. to 14 Feb. 1946, 33. This transfer was specifically mentioned in the resolution of Feb. 12, section II, 2.

instruments to colonies or possessions of a party or to protectorates or territories for which it holds a mandate; notification of such acts to other parties and other interested states; the issue of certified copies; and the circulation of information or documents which the parties have undertaken to communicate to each other. Any interruption in the performance of these functions would be contrary to the interests of all the parties. It would be convenient for the United Nations to have the custody of those instruments which are connected with activities of the League of Nations and which the United Nations is likely to continue.

The First Committee of the Assembly of the League on April 9, unanimously approved a draft resolution proposed by the delegates of the United Kingdom, Canada, Denmark, New Zealand, Portugal and Sweden. The Assembly adopted it on April 18 as follows:⁴⁴

1. Custody of the Original Texts of International Agreements.

The Assembly directs that the Secretary-General of the League of Nations shall, on a date to be fixed in agreement with the Secretary-General of the United Nations, transfer to the Secretariat of the United Nations, for safe custody and performance of the functions hitherto performed by the Secretariat of the League, all the original signed texts of treaties and international conventions, agreements and other instruments, which are deposited with the Secretariat of the League of Nations, with the exception of the Conventions of the International Labor Organization, the originals of which and other related documents shall be placed at the disposal of that Organization.

The Treaty Registration Service of the League of Nations Secretariat was transferred to the United Nations August 1, 1946. The Secretary-General of the League on August 8 notified governments of its closing and requested that in future treaties for registration and related documents be addressed to the United Nations Secretariat.⁴⁵ The Archives, considered as "an irreplaceable and invaluable record of the history of international cooperation between the two world wars," were not removed as a whole from the Palais des Nations. Only currently needed files are sent to New York and special arrangements are made for the needs of specialized agencies. The functions under international instruments were effectively transferred by October 1, 1946, but the disposal of the archives was not settled until exchanges of notes February 24-March 27, 1947.⁴⁶

With respect to functions, other than secretarial, under treaties that had been assigned to or assumed by the League of Nations, the General

⁴⁴ Records of the . . . 21st Ordinary Session of the Assembly, 57, 75, 278; see also the Report of the First Committee, 250.

⁴⁵ League of Nations, Board of Liquidation, First Interim Report, 3, (C.83.M.88.1946); Final Report, 16. The archival file consisted of 4,834 registered texts and 18 filed texts, published in 205 volumes.

⁴⁶ Same, Fourth Interim Report, 12 (C.4.M.4.1947).

Assembly took a more cautious position.⁴⁷ Those instruments were, in the view of the General Assembly, either technical and non-political or "political" in character. The first category contained "provisions, relating to the substance of the instruments, whose due execution is dependent on the exercise, by the League of Nations or particular organs of the League, of functions or powers conferred" by them. The United Nations would examine carefully which of its organs or specialized agencies were to maintain the functions and powers that were connected with such instruments. The second category consisted of various clauses, compromisory provisions, protection of minorities, protection of the Free City of Danzig, specific jurisdiction conferred on the Council of the League, etc., as well as attributions of a more general character.

With respect to functions and powers of "a technical and non-political character" the General Assembly of the United Nations in its resolution of February 12:⁴⁸

I.B. The General Assembly is willing, subject to these reservations [intimate connection with activities continued by the United Nations and careful assignment to an organ or agency], to take the necessary measures to ensure the continued exercise of these functions and powers, and refers the matter to the Economic and Social Council.

II. 1. The General Assembly requests the Economic and Social Council to survey the functions and activities of a non-political character which have hitherto been performed by the League of Nations in order to determine which of them should, with such modifications as are desirable, be assumed by organs of the United Nations or be entrusted to specialized agencies which have been brought into relationship with the United Nations. . . .

With respect to the second category the General Assembly resolved:

I.C. The General Assembly will itself examine, or will submit to the appropriate organ of the United Nations, any request from the parties that the United Nations should assume the exercise of functions or powers entrusted to the League of Nations by treaties, international conventions, agreements and other instruments having a political character.

Those formulas expressed the final compromise between the *en bloc* and selective principles with which the Executive Committee of the Preparatory Commission struggled; in the League and later the category distinction was not maintained.

In the First Committee of the Assembly of the League of Nations the proposal introduced on April 9 by the delegates of the United Kingdom,

⁴⁷ The League of Nations had made available a survey of the *Powers and Duties Attributed to the League of Nations by International Treaties* (C.3M.3.1944.V.1), which listed them in 20 categories.

⁴⁸ Resolutions adopted by the General Assembly . . . 10 Jan. to 14 Feb. 1946, 33 (A/64).

Canada, Denmark, New Zealand, Portugal and Sweden attempted to meet the condition. The draft met approval in the committee, the delegates of Portugal and Switzerland expressing the hope that the United Nations would not conduct the activities "within a closed circle" and would allow non-members to be associated with them as formerly. The resolution went through the Assembly on April 18 with an addition that the assumption of activities be without interruption. The resolution as adopted reads:⁴⁹

2. Functions and Powers arising out of International Agreements of a Technical and Non-political Character.

The Assembly recommends the Governments of the Members of the League to facilitate in every way the assumption without interruption by the United Nations, or by specialized agencies brought into relationship with that organization, of functions and powers which have been entrusted to the League of Nations, under international agreements of a technical and nonpolitical character, and which the United Nations is willing to maintain.

Some of those functions were not specifically under international agreements and the First Committee wished the transfer not to be interrupted by the dissolution of the Secretariat, the personnel of which had been given notice of termination of employment on July 31. It therefore put through a resolution to ensure service during the transition, which the Assembly adopted on April 18:⁵⁰

The Assembly directs the Secretary-General of the League of Nations to afford every facility for the assumption by the United Nations of such nonpolitical activities, hitherto performed by the League, as the United Nations may decide to assume.

By August 1, 1946, the Secretariat of the League was reduced to 76 persons as against 246 on June 1 and in those two months 65 officers had transferred or seconded to the United Nations along with their functions, as well as 50 establishment employees. Transfer of the functions affecting the staff of the Library, the Internal Services, the Supplies Service, the General Stenographic Service and the Roentgenographic and Multigraph Service, together with their personnel, was made by a protocol dated August 1, 1946,⁵¹ to the agreement of July 19, 1946. The League staff was progressively reduced by transfer or termination to 19 higher officers who continued with the Board of Liquidation until its dissolution in July, 1947.

⁴⁹ Records of the . . . 21st Ordinary Session of the Assembly, 57, 75, 86, 250, 278.

⁵⁰ Same, 58, 87, 251, 278. The General Assembly of the United Nations in its resolution of February 12 (section II, 3) considered it to "be desirable for the Secretary-General to engage . . . such members of the experienced personnel" as were performing work taken over from the League.

⁵¹ Same, First Interim Report, 18 (C.83.M.83.1946); Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, 143 (A/64/Add.1).

Pending formal transfer the United Nations arranged with the Secretary-General of the League for continuance by the League Secretariat of the activities which should not be interrupted, which were listed in the resolution of February 12 as: The Economic, Financial and Transit Department, the Health Section, the Opium Section and the secretariats of the Permanent Central Opium Board and Supervisory Body.⁵³

At its first three sessions, January 23–February 16, May 25–June 21, September 11–December 10, 1946, the Economic and Social Council organized itself, established under Article 68 of the Charter the commissions which in general would succeed to the “technical and non-political” activities of the League. The following were created: Commission on Human Rights,⁵⁴ Economic and Employment Commission,⁵⁵ Social Commission,⁵⁶ Statistical Commission,⁵⁷ temporary Transport and Communications Commission,⁵⁸ Commission on Narcotic Drugs,⁵⁹ and later the Commission on the Status of Women,⁶⁰ Fiscal Commission,⁶¹ and Population Commission.⁶² Into the terms of reference assigned to these commissions, some of which were given subcommissions, the inherited work of the League of Nations was fitted.⁶³ A report by the Secretary-General, noted by the

⁵² United Nations, Report of the Secretary-General, 39 (A/65).

⁵³ Economic and Social Council, Official Records, 1st session, 163; transfer details in E/38, same, 2d session, 224–42.

⁵⁴ Same, 1st session, 165; transfer details in E/40, same, 2d session, 242–269; terms of reference, 391.

⁵⁵ Same, 1st session, 166; transfer details in E/41, same, 2d session, 269–313; terms of reference, 402.

⁵⁶ Same, 1st session, 167; transfer details in E/39, same, 2d session, 207–224; terms of reference, 398.

⁵⁷ Same, 1st session, 169; transfer details in E/42, same, 2d session, 164–207; terms of reference, 395.

⁵⁸ Same, 1st session, 168.

⁵⁹ Same, 1st session, 104, 163; separated from Commission on Human Rights, E/38/Rev. 1, same, 2d session, 234; terms of reference, 405.

⁶⁰ Same, 2d session, E/54, 327; Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, 2.

⁶¹ Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 December 1946, 3. The *Structure of the United Nations* issued by the Department of Public Information (1947.1.12) shows the composition of the Secretariat, as well as of the commissions. Summaries of activities may be found in the Reports by the Economic and Social Council to the General Assembly, A/125 and A/382 and the Annual Reports of the Secretary-General on the Work of the Organization, A/65 and A/315 (Official Records of the Second Session of the General Assembly, Supp. No. 1).

⁶² The League of Nations bodies at the dissolution were: Economic Committee, Financial Committee, Fiscal Committee, Committee of Statistical Experts, Coordination Committee on Economic and Financial Questions, Committee of Experts for the Study of Demographic Problems, Committee for Communications and Transit, Health Committee, Advisory Committee for the Eastern Bureau of the Health Organization, Advisory Committee on Traffic in Opium and Other Dangerous Drugs, Advisory Committee on Social Questions, Advisory Committee of Experts on Slavery, International

Economic and Social Council on October 2, 1946,⁶³ summarized the plans of the Social, Narcotic Drugs, Statistical, and Transport and Communications Commissions and the Preparatory Committee for the International Health Conference. (The General Assembly, with the same report before it, adopted on December 14, 1946, a resolution authorizing and requesting⁶⁴ the Economic and Social Council to assume and continue the non-political functions and activities of the League of Nations previously performed by the various committees and commissions of the League with the exception of:

(a) Those functions and activities exercised pursuant to international agreements;

(b) Those functions and activities entrusted to specialized agencies which have been, or are to be, brought into relationship with the United Nations, under Articles 57 and 63 of the Charter.)

Transfers of Functions

The opium problem was the first of the transferred functions to be assimilated by the United Nations. The control system could not be interrupted, for the League functions were part of the application of the series of treaties in force for almost the entire world. The Narcotics Division, Department of Social Affairs, of the United Nations Secretariat took over from the League Secretariat on August 1, 1946, and arrangements were completed to fuse with it the secretariats of the Permanent Central Opium Board and Supervisory Body. A memorandum by the Secretariat on the transfer by a draft protocol of the functions under the conventions and agreements came before the Council with observations by several governments on September 12, on the basis of which resolutions and a draft protocol were approved October 3.⁶⁵ In the report of its Third Committee⁶⁶ the General Assembly on November 19, 1946, approved the "protocol amending the agreements, conventions and protocols on

Committee on Intellectual Cooperation. For a summary of their work in the separate fields, see *Essential Facts about the League of Nations*, 10th edition, 1939, issued by the Secretariat, Information Section.

⁶³ Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, 50 (E/245/Rev. 1).

⁶⁴ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, 79 (A/64/Add.1).

⁶⁵ Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, 13 (E/245/Rev. 1) quoting E/116 and E/168/Rev. 2, entitled "Transfer to the United Nations of Powers exercised by the League of Nations under the International Agreements, Conventions and Protocols on Narcotic Drugs." See also Report of the Economic and Social Council, 23 Jan.-3 Oct. 1946, 49-56 (A/125), and General Assembly, Report of the Third Committee, A/194.

⁶⁶ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, 81 (A/64/Add.1).

narcotic drugs concluded at The Hague on January 23, 1912, at Geneva on February 11, 1925, February 19, 1925, and July 13, 1931, at Bangkok on November 27, 1931, and at Geneva on June 26, 1936." This protocol, dated December 11, 1946, comes into force by signature, by "signature subject to approval followed by acceptance, or acceptance." It was designed to amend the instruments to substitute the United Nations organs and the World Health Organization for the League of Nations organs and the Office international d'hygiène publique and to make the changes effective in the interim until the protocol itself was in force for each signatory. Annexes specified the textual changes to be made in each instrument, which became effective when a majority of its parties had "accepted" the protocol.⁶⁷ On February 24, 1948 there were 34 parties to the protocol which had completed "acceptance" and 20 signatories requiring "acceptance."

The Economic and Social Council took resolutions on recommendation of the Commission on Narcotic Drugs on a number of subjects, including an appointment to the Permanent Central Opium Board, on March 28 and August 13, 1947.⁶⁸

Publication of the Summary of Annual Reports on Traffic in Drugs and the Quarterly Summary of Drug Seizure Reports, as well as the conventional Estimates of World Requirements, was continued.

The temporary Social Commission reviewed for the Economic and Social Council the work of the League of Nations in a report of May 21, 1946,⁶⁹ of which the Council took note on October 2 for transmission to the General Assembly. The commission recommended that all measures designed to prevent the traffic in women and children should be actively pursued; that the work on child welfare should be continued with a bolder approach, including emphasis on the Declaration of the Rights of the Child (1924) and coöperation on particular aspects with other international organizations; that the experience of Geneva with the problem of crime and the treatment of offenders indicated that it must take its place

⁶⁷ The amendments to instruments came into force as follows: convention of Jan. 23, 1912 on Feb. 24, 1948; agreement of Feb. 11, 1925 on Oct. 27, 1947; convention of Feb. 19, 1925 on Feb. 3, 1948; convention of July 13, 1931 on Nov. 21, 1947; agreement of Nov. 27, 1931 on Oct. 27, 1947; convention of June 26, 1936 on Oct. 10, 1947.

The protocol was in force for the United States on August 12, 1947 (Treaties and other International Acts Series 1671).

⁶⁸ Resolutions adopted by the Economic and Social Council . . . 28 Feb. to 29 Mar. 1947, No. 49 (IV), 37 (E/437); *ibid.*, 19 July to 16 Aug. 1947, No. 86 (V), 55 (E/573); see also George A. Morlock, "Resolutions adopted by the Economic and Social Council relating to Narcotic Drugs," Department of State Bulletin, XVI, 687.

⁶⁹ E/41, appended to the Report of the Secretary-General on the Transfer to the United Nations of Non-Political Functions and Activities of the League of Nations, other than those Belonging to the League under International Agreements (E/177/Rev. 1), reprinted in Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, no. 23 (III), 54 (E/245/Rev. 1) and incorporated in A/134.

with other social questions with a view to providing effective machinery for studying, on a wide international basis, the means for the prevention of crime and the treatment of offenders.

The Economic and Social Council requested the Social Commission by a resolution of June 21, 1946, to consider the best way of carrying on the functions with reference to the traffic in women and children, and by a further resolution of March 29, 1947, recommended the procedure followed with respect to narcotic drugs.⁷⁰ A third resolution of August 14, 1947, recommended the General Assembly to approve assumption of the functions and powers exercised by the League of Nations in respect of the suppression of the traffic in women and children and of obscene publications.⁷¹ The General Assembly's resolution of October 20, 1947, commended to the parties two protocols, which were signed on November 12, 1947. One protocol amends the convention for the suppression of the traffic in women and children concluded at Geneva on September 30, 1921, and the convention for the suppression of the traffic in women of full age concluded at Geneva on October 11, 1933. The other protocol amends the convention of September 12, 1923, for the suppression of the circulation of and traffic in obscene publications. Two resolutions of the Economic and Social Council on August 14, 1947, aimed to complete consolidation of this work. One requested the Secretary-General to find whether the French Government would transfer to the United Nations its functions under the agreement of May 18, 1904, and the convention of May 4, 1910, for the suppression of the white slave traffic and under the agreement of May 4, 1910, for the suppression of obscene publications.⁷² The other resolution contemplated unification of the 1904, 1910, 1921, and 1933 instruments on traffic in women and children along with the League of Nations draft convention of 1937 regarding the exploitation of the prostitution of others. The General Assembly recommended that effect be given to the provisions of the protocols pending their entry into force. In this field the League of Nations issued a Summary of Annual Reports on Traffic in Women and Children and a Summary of Annual Reports on Circulation of and Traffic in Obscene Publications.

The Economic and Social Council on June 21, 1946, referred to the Social Commission the subject of child welfare, to be handled by a specially constituted subcommission.⁷³ On March 29, 1947, a further resolution approved the Social Commission's undertaking the functions and activities

⁷⁰ Resolutions adopted by the Economic and Social Council . . . 28 Feb. to 29 March 1947, 24 (E/437).

⁷¹ Resolutions adopted by the Economic and Social Council . . . 19 July to 16 Aug. 1947, no. 81 (V), 45 (E/573).

⁷² Same, No. 82 (V), 53.

⁷³ Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, 61 (E/245/Rev. 1).

formerly exercised by the League of Nations and requested the Secretary-General to provide the necessary research material. The General Assembly, however, on December 11, 1946, established the International Children's Emergency Fund and its program for the time occupies the concern of a special committee of the Economic and Social Council.⁷⁴

The Economic and Social Council on March 29, 1947, approved the Social Commission's recommendation that it consider the question of the prevention of crime and treatment of offenders on a broad international basis.⁷⁵ It is to consult with the International Penal and Penitentiary Commission, provided it has severed relations with the Franco government of Spain.⁷⁶

The General Assembly of the United Nations in the resolution of February 12, 1946, especially charged the Economic and Social Council to assume and continue the work of the League's Health Section, particularly the epidemiological service. At the San Francisco conference action on a motion to establish a health organization was postponed. The Economic and Social Council appointed on February 15, 1946, a Preparatory Technical Committee for an International Health Conference which produced a draft constitution for an organization. The International Health Conference at New York, June 19-July 22, 1946, incorporated in its final act a resolution regarding the activities of the League of Nations Health Organization, established the Constitution of the World Health Organization, created by an arrangement an Interim Commission, and drew up a protocol disposing of the Office internationale d'hygiène publique.⁷⁷ On the recommendation of the Economic and Social Council the General Assembly in a resolution of December 14, 1946, recommended acceptance of the Constitution by all members of the United Nations and by the 13 states which sent observers to the conference; instructed the Secretary-General to transfer to the Interim Commission the functions and activities of the League Health Organization, and approved loans of \$300,000 for 1946 and \$1,000,000 for 1947 to the Interim Commission to meet its expenses.⁷⁸ The Weekly Epidemiological Record, the Epidemiological Report and the

⁷⁴ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, no. 57 (I), 90 (A/64/Add.1); Resolutions adopted by the Economic and Social Council . . . 28 Feb. to 29 March 1947, no. 44 (V) 27 (E/437); *ibid.*, 19 July to 16 Aug. 1947, nos. 79 (V) and 80 (V), 39, 40 (E/573).

⁷⁵ Resolutions of the Economic and Social Council . . . 28 Feb. to 29 March 1947, no. 43 (V), 24 (E/437).

⁷⁶ This condition is stipulated in all transfers or arrangements for relationships. It is inserted pursuant to a resolution of the General Assembly of February 9, 1946 applied with respect to protocols, etc. in these terms: "all actions under these [instruments] should be suspended with respect to the Franco Government in Spain as long as that Government is in power."

⁷⁷ International Health Conference . . . Report of the United States Delegation (Department of State Publication 2703) is a convenient summary, with the texts.

⁷⁸ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, no. 61 (I), 96 (A/64/Add.1).

Bulletin of the Health Organization are continued from their transfer on August 1, 1946. The agreement between the United Nations and the World Health Organization bringing the latter into relationship with the former as a specialized agency⁷⁹ was approved by the General Assembly on November 15, 1947, and awaits approval by the World Health Assembly before entering into force. The General Assembly by resolution of November 17, 1947, transferred to the Interim Commission of the World Health Organization the relevant League of Nations assets. These consisted of archives, correspondence files and stocks of publications, which are to be reimbursed to the United Nations; the properties of the Eastern Bureau of Epidemiological Intelligence at Singapore, including its balance of 92,030.60 Swiss francs; and administration and balances of the Léon Bernard Fund, 16,165.55 Swiss francs, and of the Darling Foundation, 12,926.75 Swiss francs, both transferred by the League of Nations in protocols dated June 27, 1947. The income from the two funds is used for awards for accomplishment in public health work in commemoration of men who died in the service of the League Health Organization.⁸⁰

The League of Nations since 1920 had Economic and Financial Committees which were informally consolidated as an "organization" in 1927. They were in later years serviced by the Economic, Finance, and Transit Department of the Secretariat which produced a remarkable series of fundamental publications. Practically all of the work of the League in these was pioneering and in the transfer to the United Nations system it was spread over several bodies. The International Bank for Reconstruction and Development and the International Monetary Fund, both specialized agencies,⁸¹ organize phases of the fields which the League explored. The Economic and Social Council's Economic and Employment Commission (and its sub-commissions), Fiscal Commission, Population Commission and Statistical Commission inherit for operation and expansion still other phases of the League "organization's" activities and projects. The present program is inherently a projection into the context of the time of the League's technical foundations. The Economic and Employment Commission has Sub-commissions on Employment and Economic Stability, on Economic Development and on Balance of Payments.⁸² In carrying out a resolution of the General Assembly of February 2, 1946,⁸³ it set up a Temporary Sub-

⁷⁹ Resolutions adopted by the Economic and Social Council . . . 19 July to 16 Aug. 1947, no. 91 (V), 68 (E/573) is the text of the draft.

⁸⁰ League of Nations, Board of Liquidation, Final Report, 13, 63, 64.

⁸¹ Approved by the General Assembly Nov. 15, 1947; draft agreements, Resolutions of the Economic and Social Council . . . 19 July to 16 August 1947, no. 92 (V), 76 (E/487).

⁸² Same, 11 Sept. to 10 Dec. 1946, no. 1 (III), 1 (E/245/Rev. 1); *ibid.*, 28 Feb. to 29 March 1947, no. 28 (IV), 2 (E/487).

⁸³ Resolutions adopted by the General Assembly . . . 10 Jan. to 14 Feb. 1946, 38 (A/64).

commission on Economic Reconstruction of Devastated Areas, which was continued as the Economic Commission for Europe⁸⁴ and the Economic Commission for Asia and the Far East, and other regional economic commissions are envisaged. The United Nations Conference on Trade and Employment⁸⁵ in a way continues the League conferences of 1927 and 1933, though reaching much farther down to the roots of the problems involved in multilateral trade. Without going into detail, it may be said that the United Nations bids fair to construct a larger edifice on the economic lot which the League of Nations laid out.

The Fiscal Commission of the Economic and Social Council is in effect succeeding to the program of the League's Financial Committee not otherwise assigned, in addition to its work on taxation problems. It is continuing the *Public Finance Survey*, the studies on *Public Debt* and the compilation of treaties on double taxation.

The Population Commission took up demographic work just begun by the League when its activities stopped. The League had only paid attention in a preliminary manner to the comparability of vital statistics and the relation of population growth to economic conditions. The commission continues along those lines, and is further charged with providing demographic material for specialized agencies, preparing a yearbook, planning an international census and undertaking several special studies.⁸⁶

The Economic, Finance and Transit Department of the League of Nations had done a notable job in continuing the Monthly Bulletin of Statistics, the Statistical Yearbook and general economic and financial studies. The convention of December 14, 1928, relating to economic statistics set up a Committee of Statistical Experts. The Preparatory Commission of the United Nations recommended that the Economic and Social Council set up a Statistical Commission, which was approved by the General Assembly on January 29, 1946.⁸⁷ The Statistical Commission as organized at the second session of the Economic and Social Council on June 21, 1946, consists of representatives of 12 member states with broad terms of reference, assisted by a central statistical unit in the Secretariat.⁸⁸ The *Monthly Bulletin of Statistics* bore the United Nations imprint with the August, 1946, number. The Statistical Commission sponsored the World Statistical Con-

⁸⁴ Resolutions of the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, no. 5 (III), 5 (E/245/Rev.1); *ibid.*, 19 July to 16 Aug. 1947, nos. 68-72 (V), 6-9 (E/573).

⁸⁵ Same, 28 Feb. to 29 March 1947, no. 29 (IV), 3 (E/437), 3; *ibid.*, 19 July to 16 Aug. 1947, no. 62 (V), 1 (E/573).

⁸⁶ Same, 28 Feb. to 29 March 1947, no. 41 (IV), 19 (E/437).

⁸⁷ Report of the Preparatory Commission, 28 (PC/2); Resolutions adopted by the General Assembly . . . 10 Jan. to 14 Feb. 1946, 11 (A/64), approving the report of the Second Committee (A/16).

⁸⁸ Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, no. 23 (III), appendix III, p. 62 (E/245/Rev. 1).

gress held in Washington, September 13-25, 1947.⁸⁰ The Economic and Social Council on March 29, 1947, approved the commission's first plans for the coordination and development of statistical work.⁸⁰

The Transport and Communications Commission of the Economic and Social Council, in taking over the League's program, found that governments already had under consideration the League instruments on maritime tonnage measurement, signals at level crossings, facilities to be granted to broadcasting reporters and the unification of statistics relating to road traffic accidents; while several other projects of the Advisory and Technical Committee for Communications and Transit were either not so far advanced or were not urgent for the moment. The League committee had divided its work among five Permanent Committees for Ports and Maritime Navigation, for Inland Navigation, for Transport by Rail, on Electric Questions and on Road Traffic. The items in their programs were at various stages of development; some could be left in suspense, others would at least require expert reëxamination after the war. Immediate questions were already assigned in the fields of the European Central Inland Transport Organization,⁸¹ and the Provisional Civil Aviation Organization.⁸² More particularly the Transport and Communications Commission undertakes coordination in the field by bringing specialized agencies into relationship or by creating new ones. Agreements as specialized agencies were approved by the General Assembly on December 14, 1946, with the International Civil Aviation Organization⁸³ and on November 15, 1947, with the International Telecommunications Union⁸⁴ and the Universal Postal Union⁸⁴ neither of which had been integrated with the League activities. In another direction the Economic and Social Council issued invitations to a conference to establish an intergovernmental maritime organization on the basis of a draft prepared by the United Maritime Consultative Council.⁸⁵ A world conference on passport and frontier formalities was the subject of a meeting of experts at Geneva April 14-25, 1947, which drew up a report containing recommendations with regard to simplification and easing of passport and frontier regulations. These were submitted to governments in order to learn to what extent they do, or are willing to, comply

⁸⁰ Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, no. 9-(III), 11 (E/245/Rev.1); *ibid.*, 28 Feb. to 29 March 1947, no. 40 (IV), 17 (E/578).

⁸⁰ Same, 28 Feb. to 29 March 1947, no. 40 (IV), 16 (E/578).

⁸¹ Executive Agreement Series 469.

⁸² Executive Agreement Series 469; Resolutions of the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, no. 23 (III), at 64 (E/245/Rev. 1).

⁸³ Text in A/106, with correction.

⁸⁴ Draft texts in Resolutions of Economic and Social Council . . . 19 July to 16 Aug. 1947, nos. 90 and 89 (V), 61, 56 (E/578).

⁸⁵ Same, 28 Feb. to 29 March 1947, no. 35 (IV), 8 (E/437).

with them.⁹⁶ Monthly summaries of important events and a periodical publication of information relating to treaties on transport and communications questions are continued from the League practice.

Throughout the life of the League of Nations the question of refugees was one of its important problems, passing through several administrative forms, successively affecting 4,000,000 persons in various groups, and resulting in the conclusion of some 10 agreements. By 1946 the 100,000 remaining refugees were under the Nansen Office and the Intergovernmental Committee on Refugees.⁹⁷ The First Committee of the League Assembly heard from its High Commissioner for Refugees a review of seven years' work, complimented his written report and extended his term of service through the year 1946. The High Commissioner of the League as of January 1, 1947, transferred to the Intergovernmental Committee on Refugees his functions and responsibilities with regard to refugees from Germany and the Saar and the remaining Russian and Armenian refugees then under his jurisdiction, the funds transferred amounting to 287,164.47 Swiss francs.⁹⁸ The Board of Liquidation granted the staff of the High Commissioner termination allowances in recognition of their loyalty.⁹⁹

The General Assembly of the United Nations, like the first session of the League Assembly in 1920, acted on a refugee problem of large dimensions following war, in 1946, involving some 845,000 persons. After a sharp debate on "genuine refugees and displaced persons" the General Assembly adopted a resolution of February 12, 1946, calling upon the Economic and Social Council to appoint a special committee to report on the matter. The Constitution of the International Refugee Organization was approved by the General Assembly on December 15, 1946.¹⁰⁰ To the Preparatory Commission of the Organization, which was given an operational budget of \$151,060,000, the Intergovernmental Committee on Refugees transferred its funds and activities on July 1, 1947.

The mandate system set up by Article 22 of the Covenant of the League of Nations was succeeded by the extended and improved system of trusteeship laid down in Chapters XII and XIII of the Charter of the United Nations, which in Chapter XI reflected the new standards in relation to peoples not yet governing themselves and under the administration of metropolitan states. By Article 77 of the Charter the trusteeship system applies to "territories now held under mandate." The mandatories under

⁹⁶ Same, 19 July to 16 Aug. 1947, no. 73 (V), 10 (E/573).

⁹⁷ For a sketch of the work, see A/C. 3/5 in General Assembly, Official Records of the 1st Part of the 1st Session, Third Committee, 37.

⁹⁸ League of Nations, Records of the . . . 21st Ordinary Session of the Assembly, 90, 228, 282; Board of Liquidation, Third Interim Report, 6 (C.3.M.3,1947); Final Report, 17 (C.5.M.5,1947.1).

⁹⁹ Board of Liquidation, Fourth Interim Report, 5, 6 (O.4.M.4,1947).

¹⁰⁰ Resolutions adopted by the General Assembly, . . . 23 October to 15 December 1946, no. 62 (I), 97.

the League in 1946 were Australia, Belgium, France, Japan, New Zealand, South Africa and the United Kingdom.¹⁰¹ Japan's mandated territory, the former German Pacific islands north of the Equator, was no longer under its administration, and its disposition was one reason for providing in Article 83 of the Charter for strategic areas in trust territories. The other six holders of mandates were members of both the League of Nations and the United Nations. In the first session of the General Assembly all of them except South Africa gave the assurance that they would make trust agreements to be approved by the General Assembly.¹⁰² The delegate of South Africa, however, stated that his government intended to consult the people of its mandate, South West Africa, regarding the form their government should take. These statements were reiterated in the plenary meetings of the 21st session of the League of Nations Assembly, where the South African delegate added that it was intended to formulate before the General Assembly of the United Nations a "case for according South West Africa a status under which it would be internationally recognized as an integral part of the Union."¹⁰³ All the mandatories participated in framing the resolution introduced by the Chinese delegate in the First Committee.

The League Assembly took note of changes in the mandates which had occurred since the Assembly last met. Three "A" mandates, quondam Turkish territories described in Articles 22 of the Covenant as having "reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a mandatory," had become independent, and two of them were members of the United Nations. Iraq had blazed that trail on October 3, 1932, when it accepted certain standards laid down by the League and was admitted to membership in the League by the Assembly. In the case of Syria and Lebanon constitutions drawn up in 1936 were delayed in application, but France conditionally recognized their independence in September 1940; with the approval, or at least consent, of France they signed the Declaration by United Nations on April 12, 1945, after declaring war on Germany and Japan, and become original members of the United Nations; the mandate of July 24, 1922, had ceased to apply. In the case of Transjordan, the Arabic territory set off from the original Ottoman Palestine by a mandate of September 16, 1922, the United King-

¹⁰¹ See League of Nations, *The Mandates System: Origin—Principles—Application* (1945.VI.A.1).

¹⁰² United Nations, General Assembly, Official Records of 1st Part of 1st Session, Plenary Meetings, Australia, 233; Belgium, 238; France, 251; New Zealand, 227; South Africa, 180; United Kingdom, 166; resolution of Feb. 9, 1946, Resolutions adopted by the General Assembly . . . 10 Jan. to 14 Feb. 1946, no. 9 (I), 3 (A/64).

¹⁰³ League of Nations, Records of the . . . 21st Ordinary Session of the Assembly, Australia, 47; Belgium, 43; France, 34; New Zealand, 43; South Africa, 32-33; United Kingdom, 28.

dom had recognized its independence by an agreement of February 20, 1928, but it continued as a nominal mandate until the conclusion of the treaty of alliance signed on March 22, 1946,¹⁰⁴ confirmed its independence.

The resolution of the Assembly welcomed termination of the mandate status of the three, thereby implying that the mandates themselves were no longer in effect. Mandate instruments were a special type of treaty and the process of substituting trust agreements for them could have involved some nice legal sinuosities. The territories affected were renounced by Germany to the five "Principal Allied and Associated Powers" of the Paris Peace Conference with which terms of mandates were worked out; but they became effective when "defined" by the Council of the League. The mandate instrument was thus a unilateral undertaking of the mandatory accepted on behalf of the members of the League by its Council, which under the Covenant possessed supervisory authority with respect to observance of the undertaking. The mandatories in the Charter of the United Nations (Article 77) agreed to application of the trusteeship systems to "territories now held under mandate," which implied voluntary continuation of the mandate until it should be superseded by a trust agreement, and this was confirmed by the statements of the mandatories in the General Assembly of the United Nations and Assembly of the League of Nations. The resolution of the Assembly adopted April 18, 1946, assumed those conditions in dissolving the mandate system, which it expressed as follows:¹⁰⁵

The Assembly,

Recalling that Article 22 of the Covenant applies to certain territories placed under mandate the principle that the well-being and development of peoples not yet able to stand alone in the strenuous conditions of the modern world form a sacred trust of civilization;

1. Expresses its satisfaction with the manner in which the organs of the League have performed the functions entrusted to them with respect to the mandates system and in particular pays tribute to the work accomplished by the Permanent Mandates Commission;

2. Recalls the role of the League in assisting Iraq to progress from its status under an "A" Mandate to a condition of complete independence, welcomes the termination of the mandated status of Syria, the Lebanon and Transjordan, which have, since the last session of the Assembly, become independent members of the world community;

3. Recognizes, that, on the termination of the League's existence, its functions with respect to the mandated territories will come to an end, but notes that Chapters XI, XII and XIII of the Charter of the United Nations embody principles corresponding to those declared in Article 22 of the Covenant of the League;

¹⁰⁴ United Kingdom, Treaty Series no. 32 (1946), Cmd. 6916. The ratifications were exchanged June 17, 1946, so the treaty entered into force only after the resolution of the Assembly.

¹⁰⁵ Records of the . . . 21st. Ordinary Session of the Assembly, 278, with the report at 251 and the vote, Egypt abstaining, at 58.

4. Takes note of the expressed intention of the Members of the League now administering territories under mandate to continue to administer them for the well-being and development of the peoples concerned in accordance with the obligations contained in the respective Mandates, until other arrangements have been agreed between the United Nations and the respective mandatory Powers.

Under the Charter members of the United Nations, "states directly concerned, including the mandatory," agreed upon terms of trusteeship without working out any definition of "direct concern." The mandates submitted to the General Assembly draft agreements which were considered in the Fourth Committee¹⁰⁶ where all members were participants. Nine trusteeship agreements in succession to League mandates were approved by the General Assembly as follows:¹⁰⁷ On December 13, 1946: To Australia for New Guinea; to Belgium for Ruanda-Urundi; to France for the Cameroons and Togoland; to New Zealand for Western Samoa; to the United Kingdom for Tanganyika, Cameroons and Togoland; on November 1, 1947: to Australia, New Zealand and the United Kingdom for Nauru.

The trust agreements, in accordance with the Charter, approved differ from the League mandates in several respects. They are not divided into classes and none of these trust territories are administered "as an integral part" of the trustee's territory, although local defense measures are permitted. The objective of self-government is emphasized and oral petitions are provided for, as well as inspection on behalf of the Trusteeship Council. No draft agreement has been submitted by South Africa for South West Africa as recommended by the General Assembly on December 14, 1946,¹⁰⁸ and November 1, 1947, though South Africa has submitted a report on its administration.

In the Charter system the Trusteeship Council became the supervising body, being a principal organ of the United Nations and possessing much more influence than the Permanent Mandates Commission of the League, which only advised the Council of the League. The Trusteeship Council is composed in moieties of representatives of states which do and do not administer trust territories, with China, France, the Soviet Union, the United Kingdom and the United States represented in any case. The approval of the agreements in 1946 opened the way to organize the Trusteeship Council, the balance required in its composition by Article 86 of the Charter calling for the election by the General Assembly of two members which do not administer trust territories. Iraq and Mexico

¹⁰⁶ See the Report of the Fourth Committee, December 12, 1946, A/258, for the negotiations.

¹⁰⁷ Texts of Agreements for Trust Territories as approved . . . 13 December 1946 (General Assembly, Official Records of the 2d Part of the 1st Session, Supp. No. 5); Nauru, A/402/Rev.1.

¹⁰⁸ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, no. 65 (I), 128 (A/64/Add.1).

were elected on December 14, 1946,¹⁰⁹ and the Trusteeship Council held its first session March 26 to April 28, 1947. Costa Rica and the Philippines were added on November 13, 1947.

The United States submitted on February 26, 1947, a draft trust agreement to the members of the Security Council, New Zealand and the Philippines containing terms under which it wished to administer the former Japanese mandate for the Pacific islands north of the Equator, the Territory of the Pacific Islands. Under Articles 82 and 83 of the Charter this proposal provided for a strategic area trust, a type which did not exist under the League. The agreement was revised and approved by the Security Council on April 2, 1947, and its entrance into force was effected by approval of the President of the United States on July 18, 1947, pursuant to a law of the same date.¹¹⁰

At the succession of the United Nations to the League's mandate system Palestine was the only remaining "A" mandate. There the United Kingdom had a problem growing out of the influx of Jews into the "Jewish national home" referred to in the mandate of July 24, 1922, and the conflict of the Jews with the Palestinian Arabs had become more and more acute. The United Kingdom as the mandatory requested a special session of the General Assembly to consider the question and in its deliberations from April 28 to May 15, 1947, a Special Committee of 11 members was appointed to report to the regular session.¹¹¹ The report¹¹² recommended a partition of Palestine with independent Arab and Jewish states in economic union, and the City of Jerusalem established as a corpus separatum under a regime worked out and administered through the medium of the Trusteeship Council. The plan was approved by the General Assembly on November 29, 1947, it being understood that the United Kingdom as mandatory would evacuate Palestine by August 1, 1948 and the provisional governments would take over when organized by a Special Committee of the United Nations.¹¹³

The United Nations Educational, Scientific and Cultural Organization, organized in November, 1945, is the lineal successor of the International Committee on Intellectual Coöperation of the League of Nations. In that field the League's record was available without transfer of anything but the archives. The working League element was the International Institute of Intellectual Coöperation, established and largely maintained

¹⁰⁹ Same, no. 64 (I), 122.

¹¹⁰ 61 Stat. 397 (Public Law 204, 80th Cong., 1st Sess.); in general, Robert R. Robbins, "United States Trusteeship for the Territory of the Pacific Islands," Department of State Bulletin, XVI, 783; agreement in *Treaties and Other International Act Series*, No. 1665.

¹¹¹ Resolutions adopted by the General Assembly . . . 28 April to 15 May 1947, no. 106 (S-1), 6 (A/310).

¹¹² A/364.

¹¹³ A/516.

by the French Government under a tender dated December 8, 1924. The archives, documents and property acquired by the Institute became property of the League. The 21st session of the Assembly in a resolution of April 18, 1946¹¹⁴ instructed the Secretary-General in conjunction with the Directorate of the Institute to transfer that property to the United Nations. The resolution, which resulted from the discussion in the First Committee, read:

1. The Assembly thanks the International Institute of Intellectual Coöperation (Paris) for the valuable collaboration which, since 1925, it has given to the League of Nations as the organ for the execution of the decisions and recommendations of the International Committee on Intellectual Coöperation.

2. The Assembly,

Being desirous of facilitating by all the means in its power the continuity of the work of intellectual coöperation;

Considering that paragraph 7 of the letter of December 8, 1924, from the French Government to the President of the Council of the League of Nations provides that, in the event of the abolition of the Institute, any articles and, in particular, the archives and collections of documents deposited in the premises by the Governing Body, as well as any property which has been acquired by the Institute during its period of operation, shall remain the property of the League of Nations:

Resolves to transfer the right of property mentioned above to the United Nations;

Instructs the Secretary-General of the League of Nations to take in due time, in conjunction with the Directorate of the Institute, the necessary measures for the execution of the present resolution.

By Article 2 (e) of the agreement of July 19, 1946, the League of Nations transferred the movable property of the International Institute of Intellectual Coöperation to the United Nations.¹¹⁵ The Economic and Social Council on October 3, 1946, recommended that the Preparatory Commission of the United Nations Educational, Scientific and Cultural Organization and the Acting Director of the International Institute enter into negotiations to effect the transfer between them.¹¹⁶ An agreement was reached on December 6 which accomplished the purpose and effected the dissolution of the International Institute of Intellectual Coöperation as of December 31, 1946. Meanwhile, on recommendation of the Economic and Social Council, the General Assembly on November 19, 1946,¹¹⁷

¹¹⁴ Records of the . . . 21st Ordinary Session of the Assembly, 59, 93, 252, 279.

¹¹⁵ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, no. 79 (I), 140 (A/64/Add.1); 1 United Nations Treaty Series, at 112, file 2.

¹¹⁶ Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, no. 24 (III), 69 (E/245/Rev. 1).

¹¹⁷ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, no. 71 (I), 133 (A/64/Add.1).

recommended the assumption of the functions and activities of the Institute by the Organization under the terms of its Constitution and of the agreement establishing it as a specialized agency of the United Nations, which the General Assembly approved on December 14, 1946.¹¹⁸ The General Assembly authorized the Secretary-General to turn over to the Organization the assets of the Institute, which were transferred by the League to the United Nations without cost. As sketched for the General Assembly they consisted of office furniture and equipment valued at 3,179,500 French francs, archives, the library and stock of publications.¹¹⁹ The transfer to the United Nations was effected February 7, 1947.¹²⁰

When the Covenant of the League of Nations was made two articles were intended to provide rudimentarily for the sort of coördination of international activities which has been more effectively and logically planned under the Economic and Social Council of the United Nations. In addition to authorizing centralization of secretarial work, Article 24 of the Covenant provided for placing "under the direction of the League all international bureaus already established by general treaties if the parties to such treaties consent." Only five bodies accepted the status: The International Bureau for Information regarding Relief to Foreigners, Paris; the International Hydrographic Bureau, Monaco; the Central International Office for the Control of the Liquor Traffic in Africa, Brussels; the International Commission for Air Navigation, Paris, and the International Exhibitions Bureau, Paris. These bureaus were independent of the League in both functioning and finance, and the "direction" consisted only of receiving information and obtaining technical advice. The relation was ended with a resolution as follows:¹²¹

The Assembly directs the Secretary-General to thank the international bureaus and other organizations named in this resolution for their collaboration with the League of Nations in the past, and to inform them that the relation with the League established in accordance with Article 24 of the Covenant must be regarded as coming to an end on the dissolution of the League, with effect from the day following the close of the present session of the Assembly.

The International Relief Union, established by a convention of July 12, 1927, was in relation with the League to the extent that its accounts were reported to the League for auditing. The notice sent to it raised the question of revision of the convention and statute of the Union, which the Secretary-General of the League was informed would be considered by the General Council of the Union in the autumn of 1947.¹²²

¹¹⁸ Same, no. 50 (I), 78; text in A/77 and as covered by the protocol of February 3, 1947, in 1 United Nations Treaty Series, 233, file 11.

¹¹⁹ The schedule in A/186.

¹²⁰ League of Nations, Board of Liquidation, Third Interim Report, 3 (C.3.M.3.1947).

¹²¹ Records of the . . . 21st Ordinary Session of the Assembly, 238, 252, 279.

¹²² League of Nations, Board of Liquidation, Final Report, 20 (C.5.M.5.1947.1).

Beyond these definite instances of transfer of functions and activities under precise decisions, it is impossible within an article to trace the heritage which the United Nations takes over from the League of Nations. Illustrations of the absorptive process must suffice. No equivalent of Article 25 of the Covenant, by which the members of the League agree to encourage and promote the establishment and coöperation of national Red Cross organizations, appears in the Charter, which however in Article 71 provides for "consultation with non-governmental organizations." The terms of Article 25 with respect to national Red Cross (and Red Crescent) societies were adopted in a resolution of the General Assembly on November 19, 1946, on recommendation of the Economic and Social Council.¹²³ More importantly the International Committee of the Red Cross was accorded consultative status in category *b* by the Economic and Social Council on June 21, 1946.¹²⁴ That status represents a formalization by the United Nations of a system which grew up in the League of Nations in spontaneous application of the principle that every real interest in a subject should be examined during its consideration. Under Article 71 of the Charter the Economic and Social Council adopted on October 1, 1946,¹²⁵ rules for the consultation of non-governmental organizations which divided them into three categories: ¹²⁶

(a) Organizations which have a basic interest in most of the activities of the Council, and are closely linked with the economic or social life of the areas which they represent;

(b) Organizations which have a special competence but are concerned specifically with only a few of the fields of activity covered by the Council;

(c) Organizations which are primarily concerned with the development of public opinion and with the dissemination of information.

The Economic and Social Council is itself a development from one of the last decisions of the League of Nations Assembly, concentration of supervision and coordination of the divers activities under a Central Committee on Economic and Social Questions. Previously (in 1936) the League had adopted general regulations for the control of all committees, after 16 years of experience. The Economic and Social Council on August 12, 1947,¹²⁷ adopted general Rules of Procedure for Functional Commissions of the Economic and Social Council, and extensive studies are under way to ensure full coordination of its commissions and specialized agencies.

¹²³ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, no. 55 (I), 89 (A/64/Add.1).

¹²⁴ Resolutions adopted by the Economic and Social Council . . . 28 Feb. to 29 Mar. 1947, no. 57 (IV), at 50 (E/437).

¹²⁵ Resolutions adopted by the Economic and Social Council . . . 11 Sept. to 10 Dec. 1946, no. 17 (III), 27 (E/245/Rev.1).

¹²⁶ Economic and Social Council, Official Records, 1st Session, 321.

¹²⁷ Resolutions adopted by the Economic and Social Council . . . 19 July to 16 Aug. 1945, no. 100 (IV), 92 (E/573).

Two other instances of picking up where the League left off may be mentioned. The League of Nations dealt with the idea of a world calendar from 1923 to 1937. The question came before the Economic and Social Council on a motion by Peru that such a calendar be adopted on January 1, 1950, when the year begins conveniently for reform. A summary study by the Secretariat was prepared and the Economic and Social Council on July 21, 1947,¹²⁸ postponed action on a question that will arise again. Again, the assassination at Marseilles on October 9, 1934, of King Alexander of Yugoslavia and Minister of Foreign Affairs Louis Barthou of France caused the League of Nations to undertake studies which resulted in opening for signature on November 16, 1937, of a convention for the prevention and punishment of terrorism and of a convention for the creation of an international criminal court. The mass murders perpetrated by the Nazi Germans inspired the General Assembly of the United Nations on December 11, 1946,¹²⁹ to affirm "that genocide is a crime under international law" and to request the Economic and Social Council to study a draft convention on the subject. The Council on August 6, 1947, approved the text of a draft convention for the prevention and punishment of genocide¹³⁰ which made extensive use of the convention on an international criminal court. The General Assembly on November 21, 1947, asked the Economic and Social Council to continue its work of completing the convention.

Dissolution of the Permanent Court

The Executive Committee of the Preparatory Commission of the United Nations labored somewhat over the problem of substituting the International Court of Justice for the Permanent Court of International Justice. It tried its hand at committing all parties to the protocol of signature which were members of the United Nations by a resolution closing out the Permanent Court, and drafted a resolution "to be moved in the Assembly of the League of Nations" to accomplish a like result there.¹³¹ The Preparatory Commission, considering that resolution beyond its authority, simply noted in its report¹³² that certain of its members which were members of the League of Nations intended to move in its Assembly "a resolution for the purpose of effecting the dissolution of the Permanent Court of International Justice." The Preparatory Commission's resolution of Decem-

¹²⁸ Resolutions adopted by the Economic and Social Council . . . 28 Feb. to 29 March, 1947, no. 54 (IV), 44 (E/437); *ibid.*, 19 July to 16 Aug. 1947, no. 97 (V), 90 (E/573); the note by the Secretary-General is E/465.

¹²⁹ Resolutions adopted by the General Assembly . . . 23 Oct. to 15 Dec. 1946, no. 96 (I), 188 (A/64/Add.1).

¹³⁰ Resolutions adopted by the Economic and Social Council . . . 19 July to 16 Aug. 1947, no. 77 (V), 21, at 28 (E/573).

¹³¹ Report of the Executive Committee of the Preparatory Commission of the United Nations, 8, 67 (PC/EX/113/Rev. 1).

¹³² Report of the Preparatory Commission of the United Nations, 57 (PC/20).

ber 18, 1945, recorded that its members which were parties to the protocol of signature of December 18, 1920, assented to dissolution of the Court, and that "the states concerned" would require such assent by the states at war.

When the First Committee of the 21st Assembly of the League met on April 8, 1946, the Preparatory Commission's resolution was brought to its attention and the Governments of South Africa, France, the United Kingdom, Luxembourg, Mexico, and Norway tabled a revised version of the Executive Committee's proposal. The tabled draft contained these paragraphs on abrogation of the protocol of signature:

5. Considering that the Assembly has been informed that, under the terms of the peace treaties at present intended to be made with them or in some other appropriate form, those States parties to the Protocol of Signature of the Statute of the Permanent Court of International Justice but not members of the League which have been or still are at war with certain of the Members of the United Nations have been or will be required to assent to any measures taken to bring the Permanent Court to an end; and

6. Considering that all the Judges of the Permanent Court have resigned.

Sir Hartley Shawcross¹⁸⁸ suggested that such language "might conceivably give rise to various complicated and obscure legal problems which need not be discussed . . . and the resolution might usefully confine itself to a bare recital of the facts." The International Court of Justice was already established and the action of the United Nations and the contemplated action of the League of Nations as a matter of fact gave assent to the dissolution of the Permanent Court by all except the enemy states. The two paragraphs quoted above were consolidated into this:

Considering that all the Judges of the Permanent Court have resigned and that on the dissolution of the League no machinery will exist for the appointment of new Judges.

The actual resolution of April 18 was:

That the Permanent Court of International Justice is for all purposes to be regarded as dissolved with effect from the day following the close of the present session of the Assembly [i.e., April 19, 1946] but without prejudice to such subsequent measures of liquidation as may be necessary.

The Judges of the International Court of Justice had already held their first meeting on April 3, 1946.

The transfer and distribution of the assets of the League of Nations proceeded simultaneously with the transfer of functions and activities, but were of so different a character that they are reserved for separate treatment.

¹⁸⁸Records of the 20th and 21st Ordinary Sessions of the Assembly, 73, 55, 277 (League of Nations Official Journal, Spec. Sup. no. 194).

WAS THERE AN ULTIMATUM BEFORE PEARL HARBOR?

By NORMAN HILL *

The word ultimatum is used repeatedly in the *Report* of the Army Pearl Harbor Board and in the testimony given to the Joint Congressional Committee investigating the Pearl Harbor disaster. In the former it is asserted that the Japanese regarded the "Ten Points" submitted to their government on November 26, 1941, as an ultimatum, and the testimony of Ambassador Grew is cited in support of the statement.¹ It is further asserted, contrary to facts brought out in more recent evidence, that the Japanese navy left Takan Bay en route to Hawaii immediately after Secretary Hull's note was received.² The *Report* does not itself call the "Ten Points" an ultimatum; it does not deny, however that the Japanese were justified in so regarding the document, and it criticizes Mr. Hull for submitting a document which "hastened" the attack on Pearl Harbor. On the other hand Secretary Hull is quoted in the *Report* as denying that the document was an ultimatum. He made a similar statement to the Joint Congressional Committee and asserted at the same time that the Japanese note of November 20 to the United States was an ultimatum.³

It is not the purpose of this paper to deal with the question of responsibility for the attack on Pearl Harbor. The sole purpose is to discover whether that attack was preceded by an ultimatum threatening war. Did the Japanese note of November 20, 1941, or the American note of November 26, 1941, constitute an ultimatum as that term is used in international law?

No doubt (the term ultimatum has been used very broadly as a final proposal or demand whose rejection will result in pressure of many kinds, ranging from suspension of diplomatic relations to war) Oppenheim's definition of an ultimatum as "the technical term for a written communication by one state to another which ends amicable negotiations respecting a difference, and formulates for the last time, and categorically, the de-

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¹ *Report of the Army Pearl Harbor Board*, Ch. III, C. 2 and 3, and Ch. IV.

² Admiral Nagano has stated that the Japanese fleet left Takan Bay before Secretary Hull's note of November 26 was received. See *The New York Times*, Oct. 25, 1941. Rear Admiral T. B. Inglis testified before the Joint Congressional Committee on Nov. 17, 1945, that captured Japanese documents showed that the fleet was ordered on Nov. 25, 1941, to leave port early the next morning.

³ Secretary Hull's testimony before the Joint Congressional Committee may be found in *The New York Times*, Nov. 24, 1945. See repetition of this view in Mr. Hull's *Memoirs* as quoted in *The New York Times*, Feb. 21, 1948, p. —.

mands to be fulfilled if other measures are to be averted" indicates the wide range of actions that may be threatened.⁴ It is possible to refer to many instances when it has been well understood by both of the disputants that *ultimata* submitted did not threaten war. For instance Lord Curzon dispatched a note to the Soviet Government on May, 2, 1923, presenting a number of demands relating to Russian propaganda and other matters which had been in dispute, and threatened that unless the Soviet Government complied within ten days the British Government would consider the trade agreement of 1921 to be terminated.⁵ In 1929 the Russian Government dispatched an ultimatum to China demanding a restoration of the management of the Eastern Chinese Railway to its former status; but it was understood by both governments that there was no threat of war, and, when the Chinese reply proved unacceptable, Russia broke off diplomatic relations.⁶

In view of the fact that the attack on Pearl Harbor was the beginning of war it is evident that both the Japanese and Mr. Hull used the word ultimatum in the sense of a communication threatening war. For that reason it is pertinent to examine such *ultimata* in some detail in order to determine their identifying characteristics. What, in brief, is an ultimatum as the term has been used in the Pearl Harbor investigations, one whose rejection will lead to war?

(One type of ultimatum threatening war is described in Hague Convention III, signed in 1907. Dealing generally with the beginning of war, Article I of that document provides that "The Contracting Powers recognize that hostilities between them are not to commence without a previous unequivocal warning, which shall take the form either of a declaration of war, giving reasons, or of an ultimatum with a conditional declaration of war." As stated in the Report of the Committee of Examination the provision was intended to prevent "surprise" and "equivocation" in the beginning of war.⁷) By 1939 the Convention had been ratified or ad-

⁴ Oppenheim, L., *International Law* (1906), Vol. II, pp. 30-31. See also the definition of ultimatum in *Dictionnaire Diplomatique, Académie Diplomatique Internationale*, Vol. II, pp. 999-1000, which reads as follows: *On entend par ultimatum un acte émanant d'un Etat ou de certains de ses organes compétents, rédigé en termes péremptoires, envoyé à un autre Etat dans le but d'obtenir de ce dernier certaines satisfactions, consistant généralement soit en des actes à exécuter, soit en des abstentions. Si l'Etat auquel il est adressé refuse de l'exécuter, il peut devenir une déclaration de guerre. Il s'accompagne généralement d'un délai dans lequel il est à exécuter, avant que soient mises en vigueur les sanctions projetées. A l'expiration, du délai, l'Etat qui n'a point obtenu les satisfactions réclamées est censé être autorisé à commencer l'exécution des sanctions indiquées ou les opérations de guerre.*

⁵ Toynbee, A. J., *Survey of International Affairs*, 1924, p. 221.

⁶ *The China Year Book, 1929-1930*, p. 1225. Also Clyde, P., *A History of the Far East*, p. 650.

⁷ *Proceedings of the Hague Peace Conference of 1907*. Scott, J. B. ed., Vol. III, p. 42.

hered to by thirty states.⁸ Because it did not have the ratifications of all of the belligerents, the convention was not generally applicable either in World War I or in World War II.⁹ Both the United States and Japan were parties to it, however, and it was therefore applicable in the relations between those two states during the month of November, 1941. There was nothing new, however, in the meaning of the word "ultimatum" as used in the convention; if there was anything new in the convention it was the requirement that war be preceded by a declaration or by an ultimatum with a conditional declaration.¹⁰

The kind of an ultimatum mentioned in Hague Convention III (one with a conditional declaration) as constituting one method of beginning war is most explicit in every respect, setting forth certain demands and stating specifically that unless an acceptance is received within a fixed period of time, "war" will follow immediately. Such an ultimatum would not in international law require any subsequent declaration of war. It will be understood that a status of war will be the consequence *ipso facto* of rejection of the demands made or of the expiry of the time limit. If a formal declaration is made under these circumstances, it is likely to be a matter of constitutional procedure.¹¹ No doubt it was this kind of document which M. Kleen had in mind when he said that "if it is *bien précis*, it constitutes in effect a declaration of war."¹²

An ultimatum of this nature was submitted to the British Government by President Kruger of the Transvaal on October 8, 1899.¹³ It demanded *inter alia* that British troops leave the republic immediately, and stated that the absence by 5 P.M. on October 11 of an affirmative reply to the four demands made would be looked upon as a declaration of war. On the expiry of the time limit the Boer War began.

None of the ultimatums dispatched by the governments which became belligerent in World War I contained a conditional declaration of war. In

⁸ The States which had ratified or adhered to the Convention were: Austria-Hungary, Belgium, Bolivia, Brazil, China, Denmark, El Salvador, Ethiopia, Finland, France, Germany, Great Britain, Guatemala, Haiti, Japan, Liberia, Luxemburg, Mexico, Netherlands, Nicaragua, Norway, Panama, Poland, Portugal, Roumania, Russia, Siam, Sweden, Switzerland, and the United States.

⁹ Bulgaria, Greece, Italy and Serbia (Yugoslavia) were not party to the convention.

¹⁰ Practice regarding the use of a declaration or an ultimatum in the commencement of war during the eighteenth and nineteenth centuries was not uniform; during the latter half of the nineteenth century only a few wars were begun without the dispatch of such a document, but on the whole Hague Convention III must be looked upon as legislation somewhat in advance of the prevailing usage.

¹¹ For instance in the United States it is Congress that declares war, and therefore an ultimatum submitted by the president would be followed by a formal declaration, unless the ultimatum is dispatched with Congressional authorization and specifically names war as the alternative to the acceptance of demands.

¹² *Annuaire de l'Institut de Droit International*, 1906, p. 34.

¹³ Westlake, J., *International Law*, Part I. (1907), p. 26.

World War II, however, both France and Great Britain, acting individually, dispatched ultimatums to Germany that were explicit in every detail. In demanding that Germany cease its aggressive action against Poland, these documents fixed September 3 at 11 A.M. as the deadline for replies to notes submitted twenty-four hours earlier and asserted that if satisfactory replies were not forthcoming "a state of war exists as from that time."¹⁴ Later in the same day Prime Minister Chamberlin announced in the House of Commons that "no such undertaking was received at the time stipulated and consequently this country is at war with Germany."¹⁵

Most ultimatums threatening war do not contain conditional declarations as specified in Hague Convention III and consequently are not explicit in all respects. They are bound to be quite clear in their statements of demands, but there may be no reference to war, and perhaps no time limit. In some instances there has been no specific reference to coercion of any nature. The ultimative character of such communications is not derived from their wording so much as from the surrounding circumstances which give them meaning. (Where there is no statement of the measures to be taken in the event a demand is rejected, it is understood from the circumstances that a document is in effect a threat of war.) Where the threat is one of reprisal, the occupation of territory or something that appears to be less than war, it is again the circumstances surrounding the submission of a document which are most important, whether in view of previous statements made, the tension of the occasion, and the strength and attitudes of the disputants, it will be understood that the measures to be taken will be looked upon as acts of war. (The *sine qua non* of an ultimatum of this nature is a clear understanding on the part of both disputants that a demand is final and that rejection will lead to coercive measures in the nature of war or of acts which may reasonably be construed as acts of war by the respondent. Even though it contains no conditional declaration of war, a document which conveys such an understanding will accomplish the purpose of an ultimatum as stated by the Committee of Examination at the Hague Conference in 1907; it will enable the power to which it is addressed to "come to a decision with a full knowledge of the circumstances; it may give full satisfaction to its adversary or it may fight.")¹⁶

(Because this type of an ultimatum threatening war does not make war the consequence *ipso facto* of a rejection of the demands submitted, it is generally followed by a formal declaration.¹⁷) It is the subsequent declara-

¹⁴ Documents Concerning German-Polish Relations, and the Outbreak of Hostilities Between Great Britain and Germany on September 3, 1939. London, 1939, p. 175.

¹⁵ Same, p. 179.

¹⁶ Proceedings of the Hague Peace Conference of 1907, Scott, J. B. ed., Vol. III, p. 42.

¹⁷ Hyde, C. C., International Law Chiefly as Interpreted and Applied by the United States, Vol. II, pp. 196-197, asserts that "The Power issuing such a warning may not, however, deem failure to comply with its demands as automatically productive of war,

tion which brings the procedure within the provisions of Hague Convention III. The ultimatum in this case is only a warning that war will be declared unless the respondent agrees to the demands submitted. Failure to comply with the demands, as Professor Hyde has stated, "is indicative of the cause of the war or the excuse for waging it rather than of the beginning of the conflict."¹⁸

That the formal aspects of ultimatums of this type have followed no fixed pattern may be seen from an examination of a number of them. On April 20, 1898, Congress passed a joint resolution, which was dispatched by President McKinley to the Spanish Government on the following day, demanding that Spain "relinquish her authority and government in Cuba" and directing such employment of the army and navy as might be necessary to carry the resolution into effect.¹⁹ In forwarding the resolution to the Spanish Government, President McKinley stated that a reply must be in his hands by April 23. Although the word "war" was not used in the Congressional resolution, the Spanish Government immediately notified our government that it regarded the document as a declaration of war. Apparently the American communication appeared to the Spanish Government to be equivalent to a conditional declaration with demands which they were unwilling to meet. From the terms of the Congressional resolution, however, it is clear that our government intended to threaten war without making war the result *ipso facto* of rejection. A later act of Congress, approved on April 25, 1898, declared war to have existed since April 21, which is further evidence that this was the intention of the United States Government.

Similarly, the ultimatum sent by Italy to Turkey on September 28, 1911, did not use the word "war," but after recounting Italy's grievances against Turkey in Tripoli and Cyrenaica, announced an intention to occupy these North African territories.²⁰ A demand was made that the Turkish Government agree within twenty-four hours not to oppose the occupation. Failing the receipt of a satisfactory reply, the ultimatum asserted that "the Italian Government will be obligated to proceed to the immediate ex-

but rather as justifying its own initiative thereof." It is of course true that the implications of this second type of an ultimatum threatening war are quite as grave as those with a conditional declaration. The warning of war may be equally clear too. The difference between the two types is mainly one of procedure. In this respect it may be noted that the Institute of International Law, meeting at Ghent in 1906, required in the first draft of its resolution that war "be preceded by a declaration pure and simple, or conditional and under the form of an ultimatum," but in the final draft left out the word "conditional": *Annuaire de l'Institut de Droit International*, 1906, p. 54.

¹⁸ Hyde, as cited p. 197.

¹⁹ Moore, J. B., *Digest of International Law*, Vol. VII, p. 170.

²⁰ Text in this JOURNAL, Vol. 6, Supplement, p. 11.

cution of the measures destined to ensure the occupation." An Italian declaration of war followed the receipt of an unsatisfactory reply.

Several nations dispatched ultimatums before entering World War I.²¹ There were time limits in all of them excepting the one submitted by Germany to Belgium. The nature of the German demand upon Belgium—that no opposition be offered to the entry of the German army—made a time limit unnecessary; Germany had decided in any case to enter the country and was willing to find the answer when her troops arrived.²² Although none of the ultimatums used the word "war," the German note of August 2, 1914, to Belgium stated that rejection of the demands made would make it necessary "to consider Belgium as an enemy." In two of them no alternatives to the acceptance of the demands were stated.²³ No doubt there was a strong implication that war would follow, for the language employed in both documents was direct, the word "demand" being used several times in the Austro-Hungarian ultimatum to Serbia; the tense atmosphere of the period added substantially to the probability that rejection would be followed by war. All of the ultimatums submitted in 1914-15 were followed by formal declarations of war.²⁴

Aside from the British and French *ultimata* of September 3, 1939, to which allusion has already been made, those submitted in World War II were quite like those submitted by Germany to Belgium in 1914. They were submitted by Italy to Greece, and by Germany to Norway, Denmark, Belgium and Holland respectively. All of them demanded the right of military occupation. None threatened "war," but it was nevertheless clear that resistance to military occupation would lead to war. The Italian note to Greece stated that any Greek resistance would "be broken by armed force."²⁵ The German note to Norway and Denmark stated the German intention to occupy those countries and said that if resistance

²¹ For the texts of these documents see *International Law Documents*, Naval College, 1917, as follows: Austria-Hungary to Serbia, July 22, 1914, p. 38; Germany to Russia, July 31, 1914, p. 100; Germany to Belgium, Aug. 2, 1914, p. 101; Germany to France, July 31, 1914, p. 103; Great Britain to Germany, Aug. 4, 1914, p. 116; Russia to Bulgaria, Oct. 3, 1915, p. 208; Japan to Germany, Aug. 15, 1914, p. 175; Italy to Turkey, Aug. 8, 1915, p. 170.

²² It has already been shown, however, that under somewhat similar circumstances Italy placed a time limit in her ultimatum to Turkey in 1911.

²³ In the German ultimatum to France, the latter was given eighteen hours to state that it would remain neutral in a war between Germany and Russia, but Germany did not state what she would do if the French refused. In the Austro-Hungarian ultimatum to Serbia "demands" were made, but there was no statement as to the action to be taken in case the demands were rejected.

²⁴ *International Law Documents*, as cited, pp. 49, 100, 102, 103, 117, 170, 176, 209. Although the Austro-Hungarian note to Serbia was described by the Imperial and Royal Government as a "démarche with a time limit attached" (see *British White Book*, Cd. 7467, No. 14) it accomplished the purpose of an ultimatum in every respect.

²⁵ *The New York Times*, Oct. 29, 1940, p. 4.

were offered "it would be broken by every available means by the German armed forces."²⁶ At the same time the German ministers in Oslo and Copenhagen submitted demands for local coöperation with the German army and said that "the decision must be taken urgently, because the German action had already advanced so much that, if it was to be stopped, the German demands must be immediately accepted."²⁷ The German notes to Belgium and Holland, after stating an intention to occupy those countries, asserted that "the Belgian and Dutch Governments today have it within their power to safeguard the welfare of all peoples at the last moment by insuring that no resistance is offered." They went on to demand that orders be issued by the Belgian and Dutch Governments "without delay" to prevent resistance and said that "should the German troops encounter opposition in Belgium or Holland, it will be crushed with every means." There was no time limit set in any of these documents except in the Italian note to Greece.²⁸

Despite the diversity of form and content in the ultimatums which have just been described, and the absence of conditional declarations, all of them conveyed to the respondent a clear intention to resort to war. In the great majority of them it was not the wording of the communications that gave them the character of ultimatums so much as the surrounding circumstances—that troops were poised on the border ready to attack, that the diplomatic situation had reached an *impasse*, or that the dispatching state had a reputation for quick, aggressive moves.

Although it has been a common practice to fix in an ultimatum a time limit for a reply, there is no requirement that this shall be done. The presence of a time limit provides evidence of the urgency and of the tenseness of atmosphere which usually accompany an ultimatum, but other circumstances may do so quite as well. No doubt the diplomatic tension, together with the peremptory nature of the demands made, was sufficient both in 1914 and in 1940 to give the German ultimatums to Belgium a most urgent character, regardless of the absence of a time limit.

Further evidence of the importance of circumstances in construing a communication and thereby ascertaining the intention of the Government sending it, is to be seen from the fact that threats have been made at times with no implication that an ultimatum has been submitted. In a note handed to Ambassador Nomura on August 17, 1941, Secretary Hull stated that the Government of the United States "finds it necessary to say to the Government of Japan that if the Japanese Government takes any

²⁶ Text in *Facts in Review*, Apr. 15, 1940.

²⁷ *White Paper*, issued by the Norwegian Government, April 14, 1940. Text in *Facts in Review*, May 20, 1940.

²⁸ The Italian ultimatum to Greece was submitted at 3 A.M. on October 28, 1940. It expired at 6 A.M. on the same day. The Italian invasion of Greece began before the expiry of the time limit. See *The New York Times*, Oct. 29, 1940, p. 4, and *Parliamentary Debates*, House of Commons, Vol. 371, col. 733.

further steps in pursuance of a policy or program of military domination by force or threat of force of neighboring countries, the Government of the United States will be compelled to take immediately any and all steps which it may deem necessary toward safeguarding the legitimate rights and interests of the United States. . . ."²⁹ There is no indication that this was regarded by either disputant as more than a mere threat; certainly troop movements by the Japanese at a later date, which were undertaken in pursuance of further aggression, did not result in immediate war. At the time when the note was dispatched the relations between the United States and Japan had not reached a deadlock, nor were they badly strained; apparently both parties expected negotiations to continue and were hopeful that a peaceful solution would be found.

While a diplomatic *impasse* has usually been one of the circumstances in which ultimatums have been dispatched, it is not true that all deadlocks lead to ultimatums or that a communication dispatched to terminate a deadlock is necessarily an ultimatum. For instance, an *impasse* was reached in the Council of Foreign Ministers in London in 1945, without the submission of any ultimatum. (An ultimatum seeks to terminate a deadlock by giving the adversary a final chance to accept or reject stated terms with an understanding that rejection will lead to coercive measures.)

No doubt a diplomatic *impasse* was reached between the United States and Japan late in November, 1941. After months of negotiation no solution was in sight. Neither the Japanese note of November 20 nor the American "Ten Points" made any concession on important issues. On the other hand, nothing was done to terminate conversations, and in this respect the diplomatic situation was better than it had been in July, when discussions were suspended as a result of Japanese military occupation of southern Indo-China.

Neither of the two notes appeared to seek a termination of the deadlock by the submission of an ultimatum; at least there was nothing in their tone or content to indicate that such a procedure was being employed.³⁰ Certainly neither contained a conditional declaration of war. Furthermore the word "demand" is not to be found in either of them; both of the notes were in the nature of "proposals." There was no suggestion of coercion in either of them. In fact they were not materially different from earlier communications which passed between the two governments. There was nothing in either document to suggest the sort of finality that is characteristic of ultimatums; it appeared to be assumed, as far as the two notes were concerned, that conversations would be continued indefinitely. Indeed, the Japanese Ambassador was quoted in Mr. Hull's

²⁹ *Foreign Relations of U. S., Peace and War, U. S. Foreign Policy, 1981-1941*, p. 124.

³⁰ The text of the two notes may be found in this JOURNAL, Vol. 36 (1942), Supplement, pp. 43-47.

note of November 26 as having "recently" stated that his government was "desirous of continuing the conversations directed toward a comprehensive and peaceful settlement in the Pacific area; that it would be helpful toward creating an atmosphere favorable to the successful outcome of the conversations if a temporary *modus vivendi* could be agreed upon to be in effect while the conversations looking to a peaceful settlement in the Pacific were continuing."³¹ In his address of December 8, 1941, to Congress, President Roosevelt stated that when the Japanese attack on Pearl Harbor was made, the United States "was still in conversation with its government and its Emperor looking toward the maintenance of peace in the Pacific."³² Officially, therefore, the way was left open from November 20 until December 7 for concessions and new proposals.

If either of the two notes were an ultimatum threatening war, that fact must have derived from circumstances surrounding its submission, which gave it much graver implications than would be at all evident from its wording. Certainly the relations between the two countries were strained, and patience was near a breaking-point. No doubt both disputants were aware that the diplomatic situation was much more serious than would be apparent in the wording and contents of the communications between them. But it is not at all clear that the circumstances surrounding the submission of either the Japanese note of November 20 or the American note of the 26th would prove that the dispatching government intended to submit an ultimatum threatening war and that the respondent understood that one had been received. It has already been pointed out that the purpose of an ultimatum is to give the respondent a final opportunity to accept stated terms or face coercion, a purpose that would be quite unattainable unless both of the parties had the same understanding of the diplomatic situation and were aware that a communication had been submitted with the intention of providing such an alternative.

There is no considerable evidence that the United States Government intended its note of November 26 to be regarded as an ultimatum threatening war. In a letter to the Army Board, Secretary of State Hull asserted that "... the document under reference did not constitute in any sense an ultimatum."³³ Later in his testimony before the Joint Congressional Committee investigating the Pearl Harbor disaster, Mr. Hull again took this position.³⁴ It may be, as Secretary Stimson said in his diary, that

³¹ Text of the note in this JOURNAL, Vol. 36 (1942), Supplement, p. 44

³² Text of the address is given in same, of Official Documents, p. 22.

³³ Letter of Sept. 28, 1944, to the Army Pearl Harbor Board, quoted in *Report*, Chapter III, C.

³⁴ *The New York Times*, Nov. 24, 1945, pp. 1 and 3. He referred to Japanese statements that his note was an ultimatum as "in line with a well-known Japanese characteristic of utilizing completely false and flimsy pretexts." Mr. Hull stated further that his note was "essentially a restatement of principles which have long been basic in this country's foreign policy."

Mr. Hull regarded the "Ten Points" as his final effort, and that he "had broken the whole matter off" and "washed his hands of it," but these were personal reactions not communicated to the Japanese Government.³⁵ At most they were evidence of the recognition of a diplomatic *impasse*. Secretary Hull had submitted proposals which he and other American officials knew did not have much, if any, chance of acceptance. They realized too that Japan might resort to force, but no evidence has been presented to show that this government had in any way threatened to coerce the Japanese. The evidence shows rather that the high officials in Washington were fearful after November 26 of a Japanese attack on the United States.³⁶

It may be, as the *Army Report* asserts, that the Japanese regarded Mr. Hull's note as an ultimatum, even if it were not intended as such. There is, of course, little to prevent a government from construing a note which it has received in any way that it pleases. But it could not be admitted that a note is an ultimatum simply because the respondent chooses to call it one. Often an attitude of this sort may be assumed only to place the blame for war on an adversary, or as justification for a sudden attack.

Although the *Army Report* asserts that the Japanese treated Mr. Hull's note as an ultimatum "by notifying the task force, which, as the evidence shows, was waiting at Takan Bay, to start the movement against Hawaii, and it did move out on the 27th-28th of November," later evidence shows that the Japanese fleet actually left on November 26, before the receipt of Mr. Hull's note.³⁷ Even were it true that the fleet left Japanese waters after the receipt of the note, this fact could hardly transform the note into an ultimatum. Any event might be made the occasion for a fleet movement; for that matter such action might have no relation to any particular diplomatic event.

It may be noted, too, in discussing the Japanese attitude toward Secre-

³⁵ Mr. Stimson's diary, quoted in the *Report*, Chapter III, C, quotes Mr. Hull as saying to the Secretary of War, "I have washed my hands of it, and it is now in the hands of you and Knox, the Army and the Navy."

³⁶ For instance the following account is given in *Peace and War, U. S. Foreign Policy, 1931-1941*, p. 138: "On November 25 and November 28, at meetings of high officials of this Government, Secretary Hull recognized the critical nature of the relations of this country with Japan. He stated that there was practically no possibility of an agreement being achieved with Japan; that in his opinion the Japanese were likely to break out at any time with new acts of conquest by force; . . . The Secretary expressed his judgment that any plans for our military defense should include an assumption that the Japanese might make the element of surprise a central point in their strategy and also might attack at various points simultaneously. . . ."

³⁷ On November 17, 1945, Admiral T. B. Inglis testified before the Joint Congressional Committee that captured enemy documents had revealed that the Japanese fleet left Takan Bay early on the morning of November 26, in accordance with instructions issued on November 25. This statement has been confirmed by Admiral Nagano. See *The New York Times*, Oct. 25, 1941.

tary Hull's "Ten Points" that no official statement emanated from the Japanese Government to the effect that an ultimatum had been received by them. From Ambassador Grew's observations the Japanese attitude could at most be labeled semi-official. He said that a letter from a prominent Japanese closely in touch with government circles stated that "I have had conversations with my friends and after examining their feelings I have come to the conclusion that they believe, with no knowledge of the actual contents of the American document of November 26, that Washington has delivered an ultimatum to us."³⁸ Mr. Grew said that he believed that the letter furnished "a fair sample of public opinion in Japan."

In his testimony before the Joint Congressional Committee, Secretary Hull declared that the Japanese proposals of November 20, 1941, to this government constituted in effect an ultimatum.³⁹ He stated that intercepted messages in code had revealed that "negotiations must be terminated by November 25, later extended to November 29."⁴⁰ In another connection Mr. Hull said before the Committee that the Japanese note of November 20 was flatly described by a Japanese emissary as "a final Japanese proposition, an ultimatum." It may be noted too that as early as November 15 Mr. Hull asserted to the Japanese envoys in Washington that he did not think that our government should be receiving "representations suggestive of *ultimata*."⁴¹

It would, of course, be impossible to take as final Mr. Hull's designation of the Japanese note of November 20 as an ultimatum any more than the Japanese view that we sent an ultimatum on November 26 may be taken as incontrovertible. It is important in fixing the status of the Japanese communication to have their view of the matter as well as that of our own government.

Did the Japanese Government regard their note of November 20 as an ultimatum? The point has already been made that the document contained no "demand," and that in diplomatic conversations it was consistently referred to as a "proposal." It presented no threat of force, but in Japan government officials made speeches openly suggesting coercion. While there was no time limit for an acceptance set in the note, the Japanese envoys in Washington urged a quick settlement and from intercepted code messages American officials learned that the Japanese Government had fixed a deadline for acceptance. On the other hand, the

³⁸ Grew, J. C., *Ten Years in Japan*, pp. 485-486.

³⁹ *The New York Times*, Nov. 24, 1945, pp. 1 and 3.

⁴⁰ The same; see also *Foreign Relations of U. S., 1931-1941*, p. 761 (here Nov. 24 is given as the date fixed for the termination of negotiations), and Secretary Stimson's statement in *Report of the Army Pearl Harbor Board*, p. 59, that the War Department had "information available Nov. 17 and 22 that the negotiations for a peaceful settlement be terminated by Nov. 25, 1941, later extended to Nov. 29, 1941."

⁴¹ *The New York Times*, Nov. 24, p. 3.

deadline was not considered as immutable by the Japanese for it was changed. Mr. Hull has already been quoted as saying that a Japanese emissary called the communication an ultimatum. From his reported statement it is not clear, however, whether the emissary made such a reference to Mr. Hull personally or to Japanese officials in an intercepted message. If the former were the case, then certainly the Japanese Government intended to send us an ultimatum and there was one in fact. But since Mr. Hull relied so strongly upon intercepted messages in fixing his attitude toward the note, as his testimony shows, it appears probable that the statement of the Japanese emissary was not made directly to him.

There can be small doubt that the Japanese treated their note to us very much as though it were an ultimatum. They were prepared to support their "proposals" with force and when, on November 25, the order was given to the fleet to leave for Hawaii, they were no doubt motivated by the prospect of a refusal of their terms by the United States. Just in case an agreement should be reached, the fleet was instructed to stop at a designated place and await further orders before attacking Pearl Harbor. In other words the Japanese note of November 20 was treated by them as a finally demand whose rejection would lead to war.

While the Japanese note of November 20 meets most of the requirements of an ultimatum, it lacked one—the intention of apprising the United States of its ultimative character, so that our government might choose between acceptance of their terms or war. The gravity of the situation was known in Washington and it was realized that war was imminent, but a large part of the information which conveyed this understanding came from intercepted code messages, as has been brought out in testimony before the Joint Congressional Committee, as well as in the *Army Report*.

It could scarcely be argued that a government sending an ultimatum may properly attempt to keep the respondent government from being aware of the fact. Had our government not discovered their secrets it might have placed a very different interpretation upon the communication of November 20. While the Japanese were determined to treat the document as though it were an ultimatum, they intended to present it to us only as a strong representation in order that their attack might come with the utmost surprise to us. A note of this character does not qualify as a *bona fide* ultimatum, for it is not the intention to present the respondent with the alternatives of acceptance or war. To say that because our government discovered Japanese secrets which gave the note a more serious meaning so that it carried the implications of an ultimatum cannot alter its original purpose or the intentions of the Japanese Government. Were the document to be given the status of a *bona fide* ultimatum, Japanese procedure in bringing on the war would gain in regularity, and the element of deceit so apparent in their negotiations would be condoned.

An ultimatum may at times seem harsh and unjustified, but it is in no case a term applied to a deceitful representations intended to give the respondent government a different understanding of the diplomatic situation from that retained by the dispatching government. While the respondent is expected to interpret a note in the light of the related circumstances and thereby decide the extent of its gravity, it is not required that the coded messages of the dispatching government be intercepted in order to know what those circumstances are.

The facts which have been made official indicate that a diplomatic *impasse* was reached between the United States and Japan during the month of November, 1941. Both governments realized by that time that war was unavoidable, but neither dispatched a *bona fide* ultimatum. Undoubtedly the Japanese note of November 20 in many ways suggested one, but it was not intended to give this government the warning which an ultimatum should provide.

THE STATES DIRECTLY CONCERNED: ARTICLE 79 OF THE UNITED NATIONS CHARTER

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Statesmen, politicians, political scientists, journalists, and radio commentators seem to agree on one thing about the United Nations: success or failure depends upon the spirit animating its members. As Eagleton says, "The system [embodied in the United Nations Charter] does not automatically guarantee security to anyone, and whether it will provide peace and human advancement will depend entirely upon the willingness of its Members to cooperate toward these ends."¹

In the interval between the two world wars the belief that a written constitution could be a panacea was severely deflated. With but two exceptions (Czechoslovakia and Finland), the European states which, after the first world war, adopted full fledged written democratic constitutions became autocracies in spite of them. It is good that in assessing the United Nations Charter we have realized from the start that this written constitution of the United Nations is but a tool for international cooperation, and that man will determine its effects. There is a certain danger in the attitude exemplified by the above quotation, however. Success or failure of the United Nations does not depend "entirely" upon the willingness of its Members. What use man will make of a given tool depends also upon what use he can make of it, and that in turn depends upon the quality of the tool. In other words, in assessing the United Nations Charter we should also ask ourselves whether it can be used for the ends which it was designed to serve, or whether its structure contains certain flaws that impede such a use. The much discussed so-called veto power of the Big Five is not this kind of flaw for it does not prevent cooperation between the Members of the United Nations, if they want to cooperate. But at least one flaw has already become apparent in the Charter which is a genuine impediment to such a cooperation, a flaw resulting from an ambiguous phraseology in Article 79.

Article 79 ordains² that "the states directly concerned" shall participate in the negotiations on the terms of trusteeship for each territory to

¹ "The Charter Adopted at San Francisco," in *American Political Science Review*, Vol. XXXIX (1945), p. 942.

² Art. 79 says: "The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandates by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85."

be placed under the trusteeship system. Yet the article tells us only that when a territory held under mandate by a Member of the United Nations is placed under the trusteeship system the mandatory power is one of "the states directly concerned." No doubt we are justified in arguing that when "territories [are] voluntarily placed under the [trusteeship] system by states responsible for their administration" (Article 77c), the administering state is likewise one of "the states directly concerned." What holds good for a "mandatory" power should hold good all the more for an "administering" state. But regarding both types of cases Article 79 leaves us entirely in the dark about who the other "states directly concerned" may be. And Article 79 leaves us entirely in the dark about all the states "directly concerned" in the case that Japanese mandates or "territories which may be detached from enemy states as a result of the second world war" (Article 77b) are placed under the trusteeship system. Thus Article 79 with its ambiguous phrase "the states directly concerned" leaves us without an applicable rule as to who the states "directly concerned" are. As long, however, as there is no such rule, all of Chapter XII ("The International Trusteeship System") and of Chapter XIII ("The Trusteeship Council") of the Charter remain ineffective.

The fact that Article 79 gives no meaning to the phrase "the states directly concerned" must vitiate the two trusteeship chapters of the Charter, unless one of two things is possible:

- (a) to interpret the phrase through other articles of the Charter or through the intentions of the framers of the United Nations Charter; or
- (b) to point to some organ of the United Nations which the Charter authorizes to define the phrase.

Let us consider these possibilities.

A reading of the Charter reveals that there is absolutely nothing in other articles whereby the ambiguous phrase of Article 79 can be interpreted. In order to see what the framers of the United Nations Charter had in mind when they enacted the words "the states directly concerned," we shall thus have to trace the history of this phrase.

As will be recalled, the Dumbarton Oaks Proposals said nothing about trusteeships. The two trusteeship chapters of the Charter—as well as Chapter XI ("Declaration Regarding Non-Selfgoverning Territories")—are amendments to the Dumbarton Oaks Proposals. The United States and France were the first to submit such amendments at San Francisco. Article 4 of the *Additional Amendments to the Dumbarton Oaks Proposals, Proposed by the United States*³ (published May 5, 1945) said that "the trusteeship arrangement for each territory to be placed under trustee-

³ *Documents of the United Nations Conference on International Organization, San Francisco 1945*, London-New York, 1945, Vol. 3, pp. 598-600.

ship" shall be agreed upon by "the states directly concerned." Article 4 of the *French Preliminary Draft for an International Trusteeship System*⁴ (published May 5, 1945) likewise said that for each territory to be placed under trusteeship an individual trusteeship treaty should be entered into by "the states directly concerned." Hence the United States and France share joint responsibility as authors of the ambiguous phrase.⁵ The discussion of the trusteeship system was assigned at San Francisco to Committee II/4 (Committee 4 of Commission II). In the fifth meeting of the Committee (May 15, 1945), the delegates of the United States submitted as a common basis for discussion a Working Paper "prepared with careful study and consultation on the general foundation of the various proposals advanced in this Committee."⁶ Paragraph 4 of this Working Paper took over the ambiguous phrase "the states directly concerned." When Paragraph 4 was discussed in the ninth meeting of the Committee (May 23, 1945) there were added, upon a motion of the United States delegate, to the phrase "the states directly concerned" the words "including the mandatory power in the case of territories held under mandate by one of the United Nations."⁷ In the sixteenth or last meeting of the Committee the *rapporteur* presented a report which included the following recommendation: "... that the terms of trusteeship for each trust territory, which will be presented to the organization for approval, be agreed upon by the states directly concerned. In the case of territories held under mandate by one of the United Nations, the states directly concerned would include the mandatory power involved in each case."⁸ The

⁴ Same, pp. 604-606.

⁵ It is only fair to remember, however, that the passages referring to the negotiations on the terms of trusteeships in the *Draft Proposal of the Chinese Delegation on International Trusteeship* (published May 10, 1945), and in the *Amendments of the Soviet Delegation to the United States Draft on Trusteeship* (published May 11, 1945), were no less ambiguous, and merely pointed, when compared with the ambiguous phrase proposed by the United States and France, to a wider undefined range of states, which should participate in the negotiations on the terms of trusteeships. Instead of "states directly concerned" Par. 5 of the Chinese Draft Proposal used the words "states concerned" (omitting "directly"), and Par. 4 of the Soviet Amendments the words "states which were or are concerned." Besides the United States, French, Chinese, and Soviet proposals for a trusteeship system the delegates at San Francisco had before them also a *United Kingdom Draft on Territorial Trusteeship* (published May 6, 1945), and *Amendments to the Dumbarton Oaks Proposals Submitted on Behalf of Australia* (published May 5, 1945). The United Kingdom Draft said nothing at all on the procedure to be followed in the making of trusteeship agreements. The Australian Amendments contained a precise rule on this question. "The terms of the mandate" [the word mandate as used here is equivalent to the word trusteeship], said Par. 18(5), "shall in each case be defined by agreement between the General Assembly and the mandatory state." For the text of the Chinese, Soviet, United Kingdom and Australian proposals for a trusteeship system see same, pp. 615-617, 618-620, 609-614, 543-553.

⁶ Same, Vol. 10, p. 447. For the text of the Working Paper see same, pp. 677-683.

⁷ Same, p. 476.

⁸ Same, p. 577.

Committee accepted this recommendation and Paragraph 4 of the draft for the trusteeship system as well, which was nothing but Paragraph 4 of the Working Paper as amended according to the motion of the United States delegate. On June 22, 1945, the Draft Charter of the United Nations was approved by the Coördination Committee and the Advisory Committee of Jurists. Therewith the ambiguous phrase "the states directly concerned" became the essential part of Article 79 of the Charter.

Though Committee II/4 held sixteen, and its drafting Sub-committee four, meetings, nothing in the *Documents of the United Nations Conference on International Organization, San Francisco, 1945*, gives us an indication as to what the delegates meant by the phrase "the states directly concerned." The *Documents* do tell us, however, that the Committee was aware of the ambiguity of the phrase, since the Summary of the Fourth Meeting of Committee II/4 (May 14, 1945) states that the delegate of the Soviet Union "suggested that 'the states directly concerned' be more precisely defined."⁹ Yet the Summaries of the Meetings of Committee II/4 (and the same holds true of those of its Sub-committee) contain not a single word concerning the reaction of the delegates to this suggestion. When Mr. John Foster Dulles said during the General Assembly's session at London that in "discussions" at San Francisco "it was decided that the term ['the states directly concerned'] could not be defined more completely,"¹⁰ he must have been thinking of informal conversations between the delegates, therefore. The Summaries of the Meetings of Committee II/4 do not disclose that in Committee the Soviet Union's suggestion to define the phrase "more precisely" was rejected.

Thus a review of the history of the phrase "the states directly concerned" reveals that it is futile to look for its interpretation to the framers of the United Nations Charter. The most that can be said is, following Mr. Dulles, that the delegates at San Francisco reached some informal understanding that the meaning of the phrase could not be determined in the Charter. But even that becomes doubtful in the light of what Mr. Pédro Lopez (delegate of the Philippine Commonwealth) said in the fourth meeting of the General Assembly's Trusteeship Committee at London (January 25, 1946), the meeting at which Mr. Dulles made the statement just quoted. Speaking after Mr. Dulles, Mr. Lopez made the suggestion "that the Secretariat should explore the documentation of the San Francisco Conference to discover if some light could be thrown on the meaning which the framers of the phrase intended to give it."¹¹ Now Mr. Lopez had been a member of Committee II/4 at San Francisco. His suggestion at London would seem to indicate, therefore, that no under-

⁹ Same, p. 441.

¹⁰ *United Nations Journal* No. 14: Supplement No. 4—A/C/4/6.

¹¹ Same.

standing of any kind was reached at San Francisco not to determine the meaning of the phrase.

Since the ambiguous phrase of Article 79 cannot be interpreted, either through other articles of the Charter or through the intentions of the framers of the United Nations Charter, the International Court of Justice would also be unable to enlighten us on the meaning of the phrase, should the General Assembly or the Security Council according to Article 96(1) of the Charter and Articles 36(1) and 65(1) of the Statute of the International Court request the Court to give an advisory opinion on the point. In giving an opinion which attributed to the phrase some specific meaning, the Court would not be exercising its judicial power of interpreting, but would be arrogating to itself a quasi-legislative power of defining the Charter.

When we remember that the delegates on Committee II/4 were aware that the phrase in question was ambiguous, but, nevertheless did not explain it (no matter whether or not some sort of understanding was reached to refrain from such an endeavor), then the only interpretation which makes the delegates' conduct appear rational is that the delegates at San Francisco believed the Charter authorized some organ of the United Nations to define the phrase. As soon, however, as the members of the United Nations set themselves the task of 'putting into effect the trusteeship chapters of the Charter the problem arose as to which organ this was.

From November 24 to December 22, 1945, the Preparatory Commission of the United Nations met in London for its second session. At the end of this session the Commission issued a Report which, among other things, recommended that the General Assembly call on the states administering territories under League of Nations mandate "to undertake practical steps, in concert with the other states directly concerned, for the implementation of Article 79 of the Charter."¹² The General Assembly, convening for its first session in London, devoted ten plenary meetings (seventh to sixteenth meetings—14th to 19th of January 1946) to the general discussion of the entire Report, and then, at the close of the sixteenth plenary meeting, adopted the Report's recommendation on the distribution of subjects between different committees, thereby assigning trusteeship matters to the Fourth Committee. The last speaker in the General Assembly discussion of the Report of the Preparatory Commission, the Syrian delegate, Mr. al-Khoury, aptly said: ". . . the whole of the trusteeship system rests on the formation of the trusteeship agreements between the states directly concerned and on the provisions of such agreements. It is therefore of prime importance that the United Nations see that all the states directly concerned are a party to the preparation and the formation

¹² *Report of the Preparatory Commission of the United Nations* (Preparatory Commission of the United Nations, 1945), p. 49.

of each agreement.”¹³ Therewith Mr. al-Khoury had put his finger upon the salient point for applying the trusteeship chapters of the Charter and for implementing Article 79: Whom does the Charter authorize to define “the states directly concerned” in the terms of a trusteeship, the states that shall participate in negotiating these terms?

Two views on this salient point were expressed in the Fourth Committee. The one was that the Trusteeship Council, the other that the General Assembly (for areas designated as strategic the Security Council) was the competent organ of the United Nations to define “the states directly concerned.” The former view, voiced by the Canadian¹⁴ and the South African¹⁵ delegations, has three flaws:

(1) It presupposes an already existent Trusteeship Council, whereas the Trusteeship Council comes into being only after trust territories have been created. According to Article 86 of the Charter the composition of the Trusteeship Council depends on how many and which members of the United Nations administer trust territories;

(2) Though Article 7 of the Charter lists the Trusteeship Council among “the principal organs of the United Nations,” the Trusteeship Council, “being a body to assist the General Assembly, [has] no authority of its own,” as the Syrian delegate Mr. Zeineddine aptly remarked in the sixth meeting of the Fourth Committee.¹⁶ That is clearly stated in Articles 85 and 87 of the Charter.¹⁷ The Trusteeship Council could define “the states directly concerned,” only if the General Assembly authorized it to do so, and that again presupposes that the Charter has given the General Assembly the primary authority to define the phrase.

(3) Under no circumstances could the Trusteeship Council have authority to define “the states directly concerned” with respect of strategic areas to be placed under the trusteeship system, since the Charter restricts the functions of the Trusteeship Council to areas not designated as strategic (Article 85).

Thus we arrive at the conclusion that the view that the Trusteeship Council is competent to define “the states directly concerned” is unquestionably

¹³ *United Nations Journal of the General Assembly, First Session*, No. 10, p. 268.

¹⁴ “Proposals by Canadian Delegation for Insertion in Sect. 1 of the Report [of the Preparatory Commission] to the General Assembly” (Jan. 26, 1946), *United Nations, General Assembly, First Session, Documents*, A/C/4/8.

¹⁵ Mr. Nicholls, the South African delegate, made a statement in the sixth meeting of the Fourth Committee (Jan. 25, 1946). *United Nations Journal No. 15: Supplement No. 4—A/C/4/7*.

¹⁶ Same.

¹⁷ Art. 85(2): “The Trusteeship Council, operating under the authority of the General Assembly . . .”;

Art. 87: “The General Assembly and, under its authority, the Trusteeship Council. . . .”

erroneous for the period preceding the establishment of the first trust territory. With respect to the period following this event, however, the view turns out to be in essence but a modification of the other view expressed in the Fourth Committee, that is, that the primary authority to define the states "directly concerned" in the terms of any trusteeship rests (for all areas not designated as strategic) with the General Assembly. The most ardent advocates of this latter view in the Fourth Committee were the delegates of four of the Arab states (Syria, Lebanon, Iraq, and Egypt) and the delegate of the Philippine Commonwealth.¹⁸ They demanded that the meaning of the phrase "the states directly concerned" be clarified there and then. In support of such action they argued as follows.

Article 85 of the Charter "clearly" states¹⁹ that the functions of the United Nations with regard to trusteeship agreements for non-strategic areas fall within the purview of the General Assembly; the General Assembly has assigned to the Fourth Committee the task of discussing the chapter on the trusteeship system in the Report of the Preparatory Commission, and to express its opinion, among other things, on the recommendation of the Report that the General Assembly call upon the mandatory powers to take practical steps, in concert with the other states "directly concerned," for the implementation of Article 79 of the Charter; if the Committee is to endorse such a call, however, it must advise the General Assembly as to who "the states directly concerned" are in order to make the call meaningful.

Following the opinion expressed by the Syrian delegate Mr. al-Khoury in the sixteenth plenary meeting of the General Assembly (January 19, 1946),²⁰ the delegate of Iraq, Sayid Ali Jawdat al-Ayubi, proposed in the sixth meeting of the Fourth Committee (January 25, 1946) that a first attempt be made at defining the phrase "the states directly concerned" by looking for a formula which would cover (apart from the mandatory powers among the United Nations and the states voluntarily placing territories they administer under the trusteeship system) all states, at least,

¹⁸ See the statements by Mr. Zeineddine (Syria) in the fifth, sixth, and seventh meetings of the Fourth Committee, Mr. Kouri (Lebanon) in the sixth meeting of the Fourth Committee, Sayid Ali Jawdat al-Ayubi (Iraq) in the sixth meeting of the Fourth Committee, Mr. Mostapha (Egypt) in the sixth meeting of the Fourth Committee, Mr. Riaz (Egypt) in the seventh meeting of the Fourth Committee, Mr. Lopez (Philippine Commonwealth) in the fifth, sixth and seventh meetings of the Fourth Committee. *United Nations Journal No. 14: Supplement No. 4—A/C/4/6; United Nations Journal No. 15: Supplement No. 4—A/C/4/7 and A/C/4/13.*

¹⁹ Thus Mr. Zeineddine (Syria) in the seventh meeting of the Fourth Committee. *United Nations Journal No. 15: Supplement No. 4—A/C/4/13.*

²⁰ Mr. al-Khoury had said: "It is evident to our mind that the words directly concerned in Art. 79 of the Charter do include those states which by virtue of their neighborliness, their cultural, linguistic, historical, social, and economic ties with the territory to be placed under trusteeship are legitimately concerned." *United Nations Journal of the General Assembly, First Session, No. 10, p. 268.*

which are "concerned by virtue of neighborhood, or cultural, linguistic, economic, social, and continued historical ties with the territories to be placed under trusteeship."²¹ In the seventh meeting of the Fourth Committee (January 26, 1946) the Syrian delegate Mr. Zeineddine backed this proposal. He said that the claims of states "directly concerned" should "rest upon certain basic *desiderata* which were indisputable, despite the heterogeneity of the territories which would have to be considered." As such *desiderata* he, too, mentioned geographical proximity and social, economic, linguistic, cultural, and continued historical ties."²² In line with these proposals the delegation of Iraq submitted to the Fourth Committee a few days later (January 28, 1946) an Amendment to the trusteeship resolution that the Report of the Preparatory Commission had recommended to the General Assembly.²³ The Amendment provided for a resolution by the General Assembly explaining the phrase "the states directly concerned" as follows:

(a) A state which administers at present a territory under a mandate system, and a state which voluntarily places under the trusteeship system a territory falling under category C of Article 77 are directly concerned with regard to the territory in question.

(b) Among the prime and principal considerations for determining whether a state is directly concerned are the following: (i) Neighborhood and geographical adjacency of a state to the territory in question; (ii) Linguistic, cultural, social, and historical ties²⁴ between a state and the territory in question.

As drafted by the delegation of Iraq the resolution of the General Assembly, moreover, was to state expressly that "the aforesaid considerations are not exhaustive." If in a given case "states which have other reasons to be considered as directly concerned" were not admitted as participants to the negotiations, then, apparently, the General Assembly could enlarge the definition when called upon to determine additional claims.

The move to have the Fourth Committee define there and then the ambiguous phrase was defeated. In the final meeting (January 31, 1946) of the Sub-committee of the Fourth Committee the delegation of Iraq withdrew its Amendment, though with the reservation that it might raise the question of defining "the states directly concerned" at a "later stage" again.²⁵ In our opinion it was all to the good that the Amendment was not carried. Because of its vagueness and incompleteness the definition

²¹ *United Nations Journal No. 15: Supplement No. 4—A/C/4/7.*

²² *Same A/C/4/13.*

²³ "Proposed Amendment to Section 1 of Chapter IV of the Report of the Preparatory Commission by the Delegation of Iraq," *United Nations, General Assembly, First Session, Documents, A/C/4/11.*

²⁴ Note that the term "historical ties" is no longer qualified by the word "continued."

²⁵ *The New York Times*, February 1, 1946.

of the ambiguous phrase was really no definition at all, and amounted to no more than to the assertion that any state might be a state "directly concerned." But quite apart from that the following is obvious from the line of argument we have traced above: Whether the Fourth Committee could make a definition of the phrase in question hinged upon the interpretation of Article 85 of the Charter.

Now paragraph 1 of Article 85, the relevant paragraph, reads:

The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

These words by no means "clearly" state, as the Syrian delegate Mr. Zeineddine contended,²⁸ that the General Assembly is given the authority to define (for areas not designated as strategic) the states which, being "directly concerned," shall participate in negotiating the terms of a trusteeship. We must keep in mind that Article 79 distinguishes two stages in the setting up of any trusteeship, namely, a first stage, in which "the states directly concerned" negotiate the terms of trusteeship, and a second stage, in which the terms that have been negotiated by the "states directly concerned" are approved by the General Assembly or, should a strategic area be involved, by the Security Council. Only after such an approval does a trusteeship agreement exist. Therefore, the functions assigned in Article 85(1) to the General Assembly "with regard to trusteeship agreements for all areas not designated as strategic," as well as the similar functions assigned in Article 83(1) to the Security Council "with regard to trusteeship agreements relating to strategic areas," are functions that can be exercised only in the post-trusteeship agreement phase. Because of this when the General Assembly and the Security Council were given the authority to approve the terms of trusteeship, or to exercise a function which has to be exercised before a trusteeship comes into being, it had to be stated expressly in Articles 85 and 83 that the General Assembly and the Security Council have the authority to act in a matter concerning the pre-trusteeship agreement phase, and the words "including the approval of the terms of the trusteeship" were added. That the phrase "The functions of the United Nations with regard to trusteeship agreements" in Articles 85 and 83 refer as such only to functions that shall be exercised by the General Assembly or, as the case may be, by the Security Council after the terms of a trusteeship have been approved, is further corroborated by the words "and [approval] of their alteration or amendment." For if that phrase were meant to be all-inclusive, that is were meant to cover the pre- no less than the post-trusteeship agreement phase, then there would have been no reason for adding the words "[in-

²⁸ See p. 9, above.

cluding the approval] of their alteration or amendment." Yet, though it could have been argued very well that when the General Assembly or the Security Council approve an alteration or amendment of the terms of a trusteeship, they act with respect to an already existent trusteeship agreement, and hence perform a function belonging to the post-trusteeship agreement phase, even that specific function was mentioned expressly. Finally, since Articles 85(1) and 83(1) find it necessary to affirm expressly the competence of the General Assembly and the Security Council regarding two matters belonging to the pre-trusteeship agreement phase (approval of the terms of trusteeship; approval of the alteration or amendment of these terms), it would have been natural to affirm in that connection also their competence regarding a third matter of the pre-trusteeship agreement phase, namely, to define "the states directly concerned," had it been the intention to grant such authority. We see, thus, that the Charter does not authorize the General Assembly (the Security Council, in the case of strategic areas) to define the ambiguous phrase of Article 79, and that, therefore, any definition of this phrase by the Fourth Committee of the General Assembly would have been "unconstitutional." We entirely agree on this point with Mr. van Asbeck, the delegate of the Netherlands, when he said in the seventh meeting of the Fourth Committee (January 26, 1946) that the Committee was not competent to define the "states directly concerned," and that Article 85 of the Charter in stating that the General Assembly is competent to deal with trusteeship agreements "evidently referred to the stage when such agreements had been concluded."²⁷

Following the advice of its Sub-committee, the Fourth Committee incorporated into its report the United States Amendments to the trusteeship resolution of the Report of the Preparatory Commission,²⁸ which contained nothing, however, to clarify the phrase "the states directly concerned." They merely said on this point: "The General Assembly urges that all practical steps essential to the implementation of Article 79 of the Charter be taken by the states directly concerned so as to permit the establishment of the Trusteeship Council if possible no later than the Second Part of this First Session."²⁹

²⁷ *United Nations Journal No. 15: Supplement No. 4—A/C/4/13.* Mr. van Asbeck's opinion was supported in the eighth meeting of the Fourth Committee (Jan. 28, 1946) by Mr. Loridan (Belgium), and in the sixth meeting of the Fourth Committee (Jan. 25, 1946) Mr. Dulles (U. S. A.) had intimated a similar opinion. *United Nations Journal No. 17: Supplement No. 4—A/C/4/18; United Nations Journal No. 15: Supplement No. 4—A/C/4/7.*

²⁸ "Proposed Amendments to Section 1 of Chapter IV. Draft Resolution for the General Assembly (Submitted by U. S. Delegation)," Jan. 22, 1946, *United Nations, General Assembly, First Session, Documents, A/C/4/8.*

The report of the Fourth Committee was approved by the General Assembly on February 9, 1946. *The New York Times*, February 10, 1946.

²⁹ That is, when the General Assembly convenes for the first time in New York.

Not all the delegates who at the London session of the General Assembly opposed any attempt to define there and then the ambiguous phrase of Article 79 were of the opinion that such an endeavor was an "unconstitutional" assumption of power. There were other delegates (such as the delegates of Australia, Uruguay, New Zealand, China) who held that the Fourth Committee was competent to define the phrase in question, but that this would be inopportune,³⁰ an argument that was used, as a second line argument, also by those delegates who, rightly, asserted that the Fourth Committee was not competent to define "the states directly concerned." The view that—no matter whether or not the Fourth Committee was competent—it was inopportune to attempt there and then a definition of the ambiguous phrase had something fascinating for the majority of the delegates. It offered an opportunity to avoid a straight answer to the question how Article 79 of the Charter could and would be implemented, and it aroused a soothing belief that at a later and more opportune stage the General Assembly (the Security Council respectively) could and would tackle the vexatious problem. Before we probe that belief let us take a look at the situation which faced the Fourth Committee while it was discussing the implementation of Article 79. We shall then be able to understand better why the majority of the delegates adopted that belief.

Not only had all the mandatory powers among the members of the United Nations (except for the Union of South Africa) already declared their willingness to negotiate the terms of trusteeship for territories they held under League of Nation mandate;³¹ the United Kingdom and, follow-

³⁰ See the statements by Mr. Bailey (Australia), Mr. MacEachen (Uruguay), the Chairman of the Committee, and Mr. Frazer (New Zealand) in the sixth, and by Mr. Wellington Koo (China) in the seventh, meetings of the Fourth Committee. *United Nations Journal No. 15: Supplement No. 4—A/C/4/7 and A/C/4/13*.

³¹ In the eleventh plenary meeting of the General Assembly (Jan. 17, 1946) Mr. Bevin had announced that the United Kingdom Government had decided "to enter forthwith into negotiations" for placing its African mandates (the Cameroons, Togoland, and Tanganyika) under the trusteeship system. This announcement had been followed in the fourteenth plenary meeting (Jan. 18, 1946) by Mr. Frazer's declaration that New Zealand was prepared to place the mandated territory of Western Samoa under trusteeship, and in the fifteenth plenary meeting (Jan. 18, 1946) the delegates of Australia and Belgium had made like declarations with respect to the territories held by their countries under League of Nation mandates. Mr. Makin had declared that Australia would negotiate trusteeship agreements with a view of bringing the mandated territory of New Guinea under international trusteeship, and that it shared with the United Kingdom and New Zealand, as the comandatory powers, a similar intention regarding Nauru. Mr. van Langenhove had announced that Belgium would negotiate the terms of trusteeship for the mandated territory of Ruanda-Urundi. Finally in the sixteenth plenary meeting (Jan. 19, 1946) Mr. Bidault had followed suit by telling the General Assembly that France was prepared to study the terms by which trusteeship agreements could be defined in the case of the Cameroons and Togoland. Only the Union of South Africa among the mandatory powers of the United Nations had not followed the lead of the United Kingdom. The South African delegate Mr. Nicholls

ing its lead, Belgium had even drafted the terms of trusteeships for their African mandates, and had sent the draft terms to certain members of the United Nations which they deemed to be states "directly concerned" for "observations," and to certain other members of the United Nations for "information only." Acting on its own, the United Kingdom Government had decided that "on any interpretation" France in respect of Togoland and the Cameroons, Belgium in respect of Tanganyika, and the Union of South Africa in respect of all three mandated territories, must be regarded as states "directly concerned," and had sent to these states for their "observation" the respective draft terms. The United Kingdom Government had also decided to send the draft terms for all three territories, but "for information only," to China, the Soviet Union, the United States, and (in respect of Tanganyika) France, that is to the other permanent members of the Security Council.³² The Belgian Government, likewise acting on its own, had decided to send the draft terms on Ruanda-Urundi for "observations" to the United Kingdom," by any definition," in the opinion of the Belgian Government," a state directly concerned," and for "information" to all the members of the Security Council.³³

For deciding on their own which states were the ones "directly concerned" the United Kingdom and the Belgian Governments cannot very well be

had declared in the twelfth plenary meeting that the Union reserved its position concerning the future of the mandated territory of South West Africa, together with its rights of full liberty of action.

Thus when the Fourth Committee started to discuss the recommendation in the Report of the Preparatory Commission for the implementation of Art. 79 there had already arisen the situation that with respect to all territories held by members of the United Nations under League of Nation mandates, except South West Africa, Palestine, and Trans-Jordan, the mandatory powers had expressed their willingness to negotiate the terms of trusteeship.

Regarding Palestine and Trans-Jordan Mr. Bevin had said in the thirteenth plenary meeting of the General Assembly: "We think it necessary to await the Committee's report [the report of the twelve-man Anglo-American Committee of Inquiry on Palestine] before putting forward any proposals relating to the future of Palestine. Regarding the future of Trans-Jordan, it is the intention of His Majesty's Government in the United Kingdom to stake steps in the near future for establishing this territory as a sovereign independent state and for recognizing its status as such. In these circumstances the question of Trans-Jordan going under trusteeship does not, therefore, arise.

United Nations Journal of the General Assembly, First Session, No. 8, pp. 176-177, 193; No. 9, p. 235; No. 10, pp. 235, 249, 253, 264.

On March 22, 1946 the United Kingdom abandoned its mandate over Trans-Jordan; on that day the United Kingdom and Trans-Jordan signed a treaty of mutual assistance and alliance.

³² See *United Nations, General Assembly, First Session, Documents, A/C/4/9*, which contains the relevant passage of Mr. Attlee's announcement in the House of Commons of January 23, 1946, on the procedure the United Kingdom Government was following in negotiating the terms of trusteeships for its African mandates.

³³ Mr. Orts (Belgium) in the seventh meeting of the Fourth Committee (Jan. 26, 1946). *United Nations Journal No. 15: Supplement No. 4—A/C/4/13.*

blamed. The trusteeship resolution recommended in the Report of the Preparatory Commission had urged the states administering territories under League of Nation mandates to undertake "practical steps," in concert with "other" states "directly concerned," for the implementation of Article 79 of the Charter. Yet it had left the mandatory powers without any guidance as to the identity of these "other" states and as to the procedure to be followed in negotiating the terms of trusteeship. What can be said is that it would have been better had the United Kingdom and the Belgian Government contented themselves with announcing their willingness to negotiate the terms of trusteeships for their African mandates and then suspended further action till the General Assembly had expressed its view on the implementation of Article 79. However, that the United Kingdom and, following its lead, Belgium went straight ahead to negotiate terms of trusteeships with states they deemed "directly concerned" may have been precipitated by a remark of the Soviet Union delegate in the thirteenth plenary meeting of the General Assembly. Commenting on the trusteeship resolution recommended in the Report of the Preparatory Commission, Mr. Gromyko had said: "The word and (what is even more important) actions are now with those powers to which the recommendation of the Preparatory Commission . . . refers first of all."⁸⁴ This may very well have induced the United Kingdom Government to prove its good faith immediately through actions, without awaiting any further guidance by the United Nations, so that it could say "His Majesty's Government have . . . taken all the practicable steps which it is within their power to take at present."⁸⁵

No sooner were the United Nations confronted with the fact that the United Kingdom and Belgium were already negotiating the terms of trusteeships, than—instead of seeing in such negotiations simply justifiable attempts on the part of two governments to forestall any doubts in their good faith—the majority of the delegates of the Fourth Committee became convinced that a practicable method for implementing Article 79 of the Charter existed. The majority of the delegates believed that the practicable way to approach Article 79 was to let any member of the United Nations willing to place a territory under the trusteeship system decide primarily on its own who the states "directly concerned" were with which it should negotiate the terms of trusteeship. The delegates agreed that this should not preclude the claims of other states considering themselves "directly concerned." Yet the Fourth Committee did not approve the proposal of some of the delegates to establish a regular procedure that would guarantee to all members of the United Nations an opportunity of bringing their claims to the attention of any member that intended to

⁸⁴ *United Nations Journal, General Assembly, First Session, No. 9, p. 206.*

⁸⁵ Words of Mr. Attlee in his announcement to the House of Commons referred to in note 82, above.

place a territory under the trusteeship system.⁸⁶ In the opinion of the majority of the Fourth Committee it did not really matter very much what states could participate in the negotiations on the terms of trusteeship under which some state or states intended to place a territory. For the majority of the Fourth Committee found comfort in the soothing belief that when the terms of a trusteeship were submitted to the General Assembly (in respect of strategic areas to the Security Council) the General Assembly (the Security Council) could and would decide definitively "whether the parties to the agreement were in fact the states directly concerned."⁸⁷

However, it is fallacious to argue that since Articles 85(1) and 83(1) authorize the General Assembly and the Security Council to approve "the terms of trusteeship agreements" they also authorize these organs of the United Nations to determine, before giving their approval, whether or not the parties which have agreed upon the terms are "the states directly concerned." That is a *non sequitur*. The words "approval of the terms of trusteeship agreements" in Articles 83(1) and 85(1) refer obviously to the contents of the draft terms submitted for approval. Hence the General Assembly (the Security Council) must approve or disapprove the draft terms on their merits, regardless of their authorship. Now even though this much were admitted it still might be argued that before accepting the draft terms the General Assembly (the Security Council) would have to consider, as a preliminary question, whether the petitioners have a legal standing before it, and that, in deciding the "preliminary question"—to accept, or to reject, *in limine*, the petition—the General Assembly (the Security Council) incidentally would also have to decide who the states "directly concerned" are. In the types of cases falling under Article 77a (except for the former Japanese mandates), and 77c, however, the "mandatory" power or the "administering" state re-

⁸⁶ The "Proposal by the Canadian Delegation for Insertion in Sect. 1 of the Report [of the Preparatory Commission] to the General Assembly" (note 14, above), as well as the "Draft Amendment by the Belgian Delegation to the Proposal of the Canadian Delegation," *United Nations, General Assembly, First Session, Documents, A/C/4/15*, had suggested the following: A member of the United Nations intending to place a territory under the trusteeship system shall file a "Declaration of Intention" containing the names of the states "directly concerned" with the Secretary General (the Executive Secretary). The Secretary General (the Executive Secretary) shall send the Declaration to all members of the United Nations. Any member that is not named in the Declaration and considers itself a state "directly concerned" shall notify through the Secretary General (the Executive Secretary) the member that made the Declaration of any claim to participate in the negotiations on the terms of the trusteeship.

⁸⁷ Words of Mr. Dulles (U. S. A.) in the sixth meeting of the Fourth Committee. See also the similar statements by Mr. Frazer (New Zealand) in the same meeting, and by Mr. Orts (Belgium) in the eighth meeting. *United Nations Journal No. 15: Supplement No. 4—A/C/4/7 and A/C/4/13*.

spectively will apparently be the one to petition for the approval of the terms of trusteeship. In both types of cases, therefore, the decision of the General Assembly (the Security Council) on the "preliminary question" could tell us nothing not already known, and could not tell us what we do not know, namely, who the "other" states "directly concerned" are. Only if it were held that the petition for the terms of a trusteeship must be filed by all the states that participated in negotiating the terms, could a decision on the "preliminary question" of whether the petitioners have a legal standing before the General Assembly (the Security Council) imply a definition of these "other" states. When former Japanese mandates or when territories falling under Article 77b, are involved, a decision on the "preliminary question" would always imply some definition of the states "directly concerned," since the Charter leaves us in the dark even about the states "directly concerned" that may initiate the negotiations on the terms of a trusteeship. By such an indirect method of defining the states "directly concerned" through a decision on the "preliminary question," the explicit limitation imposed on the General Assembly's (the Security Council's) discretion in approving trusteeship agreements, namely, to exercise this discretion only as to the terms of the trusteeship, would be made meaningless. Hence the authority of the General Assembly (the Security Council) to reject *in limine* the terms of any trusteeship submitted for approval could only be admitted in case of a *prima facie* showing that the petitioners have no legal standing. (If, for instance, in the type of cases falling under Article 77b, only members of the United Nations which were not at war with the Axis powers were to petition for the approval of the terms of a trusteeship.) Moreover whenever there is designated in the draft of a trusteeship agreement an area or areas which "include part," and not all, "of the trust territory to which the agreement applies," according to Articles 82, 83(1) and 85(1) of the Charter, both the Security Council and the General Assembly have to approve the terms of trusteeship, the former the terms relating to the area or areas designated as strategic, the latter the terms relating to the area or areas not designated as strategic. If to the General Assembly and the Security Council were given the authority to define "the states directly concerned," when called upon to approve the terms of a trusteeship, we might suddenly find ourselves confronted with two definitions at variance with each other!

The arguments adduced so far in refuting the belief that the Charter authorizes the General Assembly (the Security Council) to define "the states directly concerned" when the terms of a trusteeship are submitted for approval, are arguments based on a grammatical and logical interpretation of the relevant articles of the Charter. Yet that belief must also be rejected for the reason that it would not provide a practicable method of deciding who the states "directly concerned" are, but, contrary to the claim of the majority of the delegates in the Fourth Committee, a most

impracticable one. As the Syrian delegate Mr. Zeineddine pointed out in the seventh meeting of the Fourth Committee, any definition of the ambiguous phrase of Article 79 is "political in nature."³⁸ Or, to speak more plainly, any definition as to who the states "directly concerned" are will always depend upon which states one wants to be "directly concerned." It should have been obvious to all the delegates, therefore, that if the state or states initiating the negotiations on the terms of a trusteeship are permitted to make their own political decisions concerning the states "directly concerned," and if thereafter, in the procedure for the approval of the terms of the trusteeship, the General Assembly (the Security Council) were permitted to define *ex cathedra* the states "directly concerned," the result probably would be that Members of the United Nations which were not invited or not allowed by the state or states initiating the negotiations to participate would claim when the terms of the trusteeship came up for approval that they, too, were states "directly concerned," and (or) that members which negotiated the terms were not states "directly concerned"; because of such claims the terms of trusteeship might fail to win approval, for the General Assembly must approve "by a two thirds majority of the members present and voting,"³⁹ the Security Council "by an affirmative vote of seven members including the concurring votes of the permanent members;"⁴⁰ after months have been spent in negotiating the terms of a trusteeship, new negotiations might have to be started between the states which the General Assembly (the Security Council) declared "directly concerned." Such a method of implementing the ambiguous phrase of Article 79 of the Charter can hardly be called a "method" at all, and surely not a "practicable" method.

Let us summarize what we hope to have demonstrated with respect to the ambiguous phrase "the states directly concerned" of Article 79 of the United Nations Charter:

(1) The phrase cannot be interpreted either through the Charter or through the intentions of the framers thereof.

(2) The Charter does not authorize any organ of the United Nations to define the phrase.

(3) The "solution" of the vexations puzzle "who are the states directly concerned?" which the majority of the delegates of the United Nations at London believed to have found is an "unconstitutional," and, besides, a most impracticable solution.

³⁸ Same, A/C/4/13.

³⁹ Among the decisions on "important" questions that need this qualified majority, Art. 18(2) of the Charter lists "questions relating to the operation of the trusteeship system."

⁴⁰ This follows from the general rule laid down in Art. 27(3) for all decisions of the Security Council concerning non-procedural matters.

(4) The phrase confronts us with a genuine impediment to a coöperation between the Members of the United Nations, and, therefore, prevents the trusteeship chapters of the Charter from becoming effective.

What can be done under these circumstances? We should admit frankly that every attempt to define the phrase in question will involve a "political," and not a "legal" issue. We should realize that the authority to decide this political issue should rest, though it does not rest at present, with the General Assembly and (in respect of strategic areas) with the Security Council, and that—since political issues are best faced as early as possible—we should give the General Assembly and the Security Council the authority to define which states, as the states "directly concerned," shall participate in the negotiations on the terms of this or that trusteeship, before such negotiations can be started. Having made up our mind about this, we must press for an amendment of Article 79 of the Charter.

In the following an attempt is made to formulate a short, as well as a long draft for such an amendment. The former takes care of what is indispensable; the latter is based upon the conviction that Article 79 should be as explicit as possible, since it is the pillar on which the whole structure of the trusteeship system rests. Let us never forget that the United Nations—nations with different traditions, different social values, different political systems, and speaking different tongues—cannot successfully co-operate unless they have at their disposal a firm, and, as far as is humanly possible, flawless structure of coöperation.

(SHORT DRAFT)

Article 79

(1) The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, and shall be approved as provided for in Articles 83 and 85.

(2) The General Assembly, or the Security Council, or both of them concurring—depending upon whether none, or all, or part of the trust territory shall be designated as strategic—shall decide which Members of the United Nations are the states directly concerned in the negotiations on the terms of trusteeship leading to the establishment of a specific trust territory, or in the negotiations leading to the alteration or amendment of such terms, before any such negotiations start.

(3) In the types of cases falling under Art. 77a or 77c, a Member of the United Nations which is the mandatory power or which is responsible for the administration of the territory to be placed under the trusteeship system is always a state directly concerned in the negotiations on the terms of trusteeship leading to the establishment of the trust territory.

(LONG DRAFT)

Article 79

(1) The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, and shall be approved as provided for in Articles 83 and 85.

(2) A Member of the United Nations which intends to place under the trusteeship system a territory held under mandate of the League of Nations or a territory referred to in Art. 77c, shall make a Declaration of Intention. Such a Declaration must state: (a) which other Members of the United Nations the declarant deems to be states directly concerned, and the reasons for this; (b) what area or areas, if any, of the trust territory the declarant wishes to have designated as strategic. The Declaration shall be submitted to the General Assembly in case it refers to no strategic area, to the Security Council in case it refers to a strategic area or areas, to both the General Assembly and the Security Council in case the trust territory consists of both strategic and non-strategic areas. The General Assembly, the Security Council, or both of them concurring—depending upon the type of Declaration of Intention—shall decide what other states besides the declarant are states directly concerned, and only after such a decision has been made shall the negotiations on the terms of the trusteeship start.

(3) A Member or Members of the United Nations which request that a territory held by Japan under mandate of the League of Nations or a territory referred to in Art. 77b be placed under the trusteeship system shall make a Request. The Request must contain the statements which must be included in a Declaration of Intention and a statement of the grounds on which the requester or requesters base their claim to be directly concerned. The three last sentences of Paragraph 2 of this Article shall apply appropriately. However no decision as to what other states are directly concerned shall be made before a decision has been made on whether the requester or requesters are directly concerned and the point in question has been affirmed with respect to at least one of them.

(4) Should, during the negotiations on the terms of a trusteeship, the state or states directly concerned that made the Declaration of Intention or the Request wish to change the plans for the trust territory with respect to the extent or the number of strategic areas, the said state or states shall submit immediately a new Declaration of Intention or a new Request. The three last sentences of Paragraphs 2 and 3 of this Article shall apply appropriately.

(5) In case an alteration or amendment of the approved terms of a trusteeship is desired, a Demand shall be submitted. If the Demand is submitted by the administering authority of the trust territory (Art. 82) Paragraph 2 of this Article, and if the Demand is submitted by a state or states which are not the administering authority Paragraph 3 of this Article, shall apply appropriately.

(6) Should, during the negotiations on an alteration or amendment of the approved terms of a trusteeship the state or states directly concerned that made the Demand wish to change the plans for the alteration or amendment with respect to the extent or the number of strategic areas, the said state or states shall submit immediately a new

Demand. If the new Demand is submitted by the administering authority of the trust territory Paragraph 2 of this Article, and if it is submitted by a state or states which are not the administering authority Paragraph 3 of this Article, shall apply appropriately.⁴¹

⁴¹ Since the above text was written the General Assembly of the United Nations has approved (December 18, 1946) eight draft trusteeship agreements (for the Australian mandated territory of New Guinea, the Belgian mandated territory of Ruanda-Urundi, the British mandated territories of Tanganyika, Togoland and the Cameroons, the French mandated territories of Togoland and the Cameroons, and the New Zealand mandated territory of Western Samoa), and has set up the Trusteeship Council (December 14, 1946). Moreover, the Security Council has approved (April 2, 1947) the draft trusteeship agreement for the former Japanese mandated islands in the Pacific and the General Assembly has approved (November 1, 1947) a ninth trusteeship agreement (Nauru, mandated territory of Australia, New Zealand, and the United Kingdom).

These events, however, do not impair the validity of the arguments presented in the paper. Only by evading for reasons of so-called expediency the basic issue of "the states directly concerned" was it possible to place all former mandated territories, except Nauru, Palestine, and Southwest Africa under the trusteeship system and to set up the Trusteeship Council.

When the eight trusteeship agreements came up for discussion in the General Assembly in its Fourth Committee and in Sub-committee 1 of the Fourth Committee, the ambiguity of Art. 79 of the Charter proved again a vexatious problem. The following interpretations were offered as to the meaning of the clause "the states directly concerned":

(1) the administering state (Mr. Dulles, U. S. A.; Mr. Bailey, Australia; Mr. Cineros, Cuba);

(2) the administering state and those states which the latter had decided were "the states directly concerned" (Mr. Naggia, France);

(3) all members of the United Nations (Mr. Galiewicz, Poland);

(4) the "Big Five" (Mr. Lisicky, Czechoslovakia);

(5) in the first place the "Big Five," but some provision for small countries to be considered "states directly concerned" with regard to particular territories (Mr. Novikov, U. S. S. R.). It was recognized, moreover, that the difficulties in determining "the states directly concerned" were difficulties "inherent" in the Charter (Mr. Thomas, United Kingdom). But no one even suggested the only legal solution, namely, to amend the Charter.

The majority of the delegates wanted "to get the job done." Their chief concern was to approve with minor modifications accepted by the mandatory powers the draft trusteeship agreements (the Belgian representative raised the pertinent question whether the Assembly had the power to amend draft trusteeship agreements unless their terms were in direct contradiction to provisions of the Charter), and to pave the way for the setting up of the Trusteeship Council. Hence the majority shelved the solution of the problem "the states directly concerned" by adopting a United States sponsored resolution that the approval of any terms of trusteeship by this session of the General Assembly be subject to the understanding that no definition of the term had been decided on, and that no state had "waived or prejudiced its right hereafter to claim to be such a 'state directly concerned' in relation to approval of subsequently proposed trusteeship agreements and any alteration or amendment of those now approved." This resolution, clearly indicating that the majority was willing to vote for the draft trusteeship agreements, though it did not profess to know who were "the states directly concerned" with which the mandatory powers should have negotiated the draft trustee-

ship agreements, was termed by the U. S. S. R. a violation of the Charter. Hence the U. S. S. R. has not participated in the sessions of the Trusteeship Council.

The U. S. S. R., and apparently a few other members of the United Nations (among them Byelorussia, India, the Ukraine and Yugoslavia), held that the General Assembly must first of all work out during its session a definition of the term "the states directly concerned." So far the states "directly concerned" had been arbitrarily decided by the mandatory powers. As long as the clause in question had not been defined by the General Assembly, the draft trusteeship agreements the mandatory powers had submitted could be considered "only preliminary drafts." When it became obvious that the majority was not willing to define "the states directly concerned" then and there the U. S. S. R. proposed a resolution declaring that the agreements submitted by the mandatory powers were contrary to the requirements of the Charter, and could not be considered as trusteeship agreements, since the Charter laid down that the terms of trusteeship should be approved by "the states directly concerned," and these had not been determined. This resolution was rejected by 36 against, six in favor with 11 abstentions.

From what has been said above it should have become apparent that any definition by the General Assembly of the ambiguous clause of Art. 79 would have been unconstitutional. However, no less unconstitutional was the approval of the draft trusteeship agreements. It may even be doubted whether the approval of the eight draft trusteeship agreements was really expedient, despite the fact that the trusteeship system got under way and that the Security Council unanimously approved a few months later—for reasons best known to its members—the U. S. A. draft trusteeship agreement concerning the former mandated Japanese islands in the Pacific. For in approving the draft trusteeship agreements the General Assembly had to go on record that it did not know who "the states directly concerned" were. Thereby it had to admit that the approval of the trusteeships and the setting up of the Trusteeship Council could not be based on the Charter, and had itself to cast doubt upon the constitutionality of its actions.

When the draft trusteeship agreement for Nauru came up for approval at the second regular session of the General Assembly and the U. S. S. R. spokesman (Professor Stein) again raised the objection that the words "states directly concerned" had not been defined, Australia offered an astonishing interpretation of the ambiguous clause. Its spokesman (Mr. Forsyth) maintained that by approving in 1946 the eight trusteeship agreements the General Assembly had shown that it did not regard the definition of the words "states directly concerned" as essential, so long as the terms of the agreement themselves were acceptable. In other words, Australia maintained that it is up to the majority of the General Assembly to decide whether or not a clause of the Charter is important!

This tendency not to amend, but to "get around" flaws or imperfections of the Charter when acting in accordance with it is either impossible (Art. 79) or undesirable (Art. 27), has again been demonstrated by the "gentlemen's agreement" between the "Big Five" that, notwithstanding the clear and mandatory wording of Art. 27(3), abstention from voting by any one of the permanent members of the Security Council on substantive matters shall never be deemed an exercise of the so-called veto power. Argentina, which became a member of the Security Council on January 1, 1948, recently (January 23) challenged this practice. The occasion was the establishing by a Council vote, with the U. S. S. R. abstaining, of a commission in the India-Pakistan dispute. The representative of Argentina (Dr. Arce) considered the Council's decision invalid legally, though he had voted in favor. Said he: "I do not oppose the permanent members of the Security Council renouncing the use of their privileges if they consider it desirable, but when they do so, it should be done publicly,"—in other

words by amending the Charter. Nothing is so inexpedient in the long run as an expediency which undermines the respect for a constitution, be this a national constitution or be this the United Nations Charter. On the material covered in this note see *United Nations Weekly Bulletin*, Vol. 1, No. 15, pp. 7, 17-19; No. 16, pp. 28-31, No. 17, pp. 3-6, 15-16; No. 18, pp. 40-43; No. 19, pp. 48-51, 52-54; No. 20, pp. 48-49; No. 21, pp. 12-15; No. 22, pp. 16-17; Vol. 2, No. 9, pp. 224-226; No. 10, pp. 260-262; No. 11, pp. 283-286; No. 13, pp. 376-377; No. 14, pp. 389-394; Vol. 3, No. 16, pp. 492-494; No. 24, p. 167; and Vol. 4, No. 4, p. 135.

EDITORIAL COMMENT

IMPLEMENTATION OF THE PROPOSED INTERNATIONAL COVENANT ON HUMAN RIGHTS

The United Nations Commission on Human Rights,¹ at its second session, held in Geneva December 2-17, 1947, decided that under the general rubric "International Bill of Human Rights" there should be prepared a Declaration on Human Rights, a Covenant on Human Rights, and measures for implementation.² Working Groups were set up to consider each problem.

The Working Group on Implementation noted, in its report to the Commission, that the proposed Declaration on Human Rights "was in the last analysis to take the form of a recommendation by the General Assembly of the United Nations, and was consequently not legally binding in the strict sense of the term."³ The proposed Covenant on Human Rights, on the other hand, is intended to take the form of a treaty establishing binding obligations under international law.⁴ Since problems of implementation refer primarily to the Covenant, only incidental reference need be given here to the Draft International Declaration on Human Rights.⁵

Article 1 of the Draft International Covenant on Human Rights appended to the Report of the Commission on Human Rights, Second Session, reads as follows:

The States parties hereto declare that they recognize the principles set forth in Part II hereof as being among the human rights and fundamental freedoms founded on the general principles of law recognized by civilized nations.⁶

¹ For a summary of the establishment, terms of reference, and work of the Commission on Human Rights, see *Yearbook of the United Nations*, 1946-47, pp. 523-532. See also James P. Hendrick, "An International Bill of Human Rights," *Department of State Bulletin*, Vol. XVIII, No. 450 (Feb. 15, 1948), pp. 195-208.

² U.N. Doc. E/600, 17 December 1947, Report of the Commission on Human Rights, Second Session.

³ Same, pp. 41-42. The Report of the Working Group on Implementation (E/CN.4/53) is reproduced in E/600, to which citations will be made here. Of the six members of this Working Group the representative of Uruguay was unable to attend and the representative of the Ukrainian Soviet Socialist Republic withdrew. The Report was therefore the work of representatives of only four of the fifty-seven Members of the United Nations: Hodgson (Australia), Dehousse (Belgium), Mehta (India) and Pourevaly (Iran).

⁴ E/600, p. 6. See also Article 23 of the Draft Covenant, the text of which is in E/600, Annex B, pp. 30-36.

⁵ Text in E/600, pp. 17-22.

⁶ Same, p. 30.

The phrase "the general principles of law recognized by civilized nations," taken from Article 38 (1) (c) of the Statute of the International Court of Justice, is apparently here designed to permit reference to "conceptions both of the 'law of nature' and '*jus gentium*'" which have "played a considerable part in the conception of the fundamental rights of man."⁷ It is not clear whether the involved phraseology of Article 1 is intended as the recognition of a definite obligation upon the parties to the Covenant to observe the principles set forth in Part II thereof or whether it is intended merely as a manifesto to settle the long-standing doctrinal controversy as to what is included in "the general principles of law recognized by civilized nations." If Article 1 is intended to have the former meaning, the draft proposed by the representative of the United States is preferable, to wit:

The High Contracting Parties declare that they recognize the obligation to observe and enforce the human rights and fundamental freedoms set forth in Part II of this convention.⁸

If, however, Article 1 of the Commission draft is not intended to establish a binding international obligation, it might more appropriately be relegated to a Preamble.

Article 2 of the Commission draft provides:

Every State, party hereto, undertakes to ensure:

(a) that its laws secure to all persons under its jurisdiction, whether citizens, persons of foreign nationality or stateless persons, the enjoyment of these human rights and fundamental freedoms;

(b) that such laws, respecting these human rights and fundamental freedoms, conform with the general principles of law recognized by civilized nations;

(c) that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(d) that such remedies shall be enforceable by a judiciary whose independence is secured; and

(e) that its police and executive officers shall act in support of the enjoyment of these rights and freedoms.

The lack of precision which characterizes the draftmanship of the Covenant renders difficult a determination of the nature and extent of the obligation stipulated. Presumably Article 2 obligates each party to the Covenant to survey its existing laws, to enact modifications or additions necessary to secure the enjoyment of the rights and freedoms stipulated in the Covenant, and to provide for their observance and enforcement.

⁷ See Comment in United Kingdom proposal on International Bill of Human Rights, annexed to Report of the Drafting Committee to the Commission on Human Rights, E/CN.4/21, 1 July 1947, p. 30. The British draft was apparently the basis for the Commission draft.

⁸ E/CN.4/37, 26 November 1947, p. 1.

The obligation to ensure the conformity of a particular state's municipal legislation with "the general principles of law recognized by civilized nations" is incapable of precise application. Whether or not the "effective remedy" which a party is obligated to ensure under paragraph (c) means more than effective means of redress is not clear; nor is it clear whether the remedy is merely against an official who violates stipulated rights or whether the state assumes an obligation to provide redress.

Other articles pertinent to the problem of implementation read as follows:

Article 3. On receipt of a request to this effect from the Secretary-General of the United Nations made under the authority of a resolution of the General Assembly, the Government of any party to this Covenant shall supply an explanation as to the manner in which the law of that State gives effect to any of the provisions of this Covenant.

Article 4. (1) In time of war or other public emergency, a State may take measures derogating from its obligations under Article 2 above to the extent strictly limited by the exigencies of the situation. (2) Any State party hereto availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of the measures which it has thus enacted and the reasons therefor. It shall also inform him as and when the measures cease to operate and the provisions of Article 2 are being fully executed.

Article 24. In case of a Federal State, the following provisions shall apply:

(a) With respect to any Articles of this Covenant which the federal government regards as wholly or in part appropriate for federal action, the obligations of the federal governments shall, to this extent, be the same as those of parties which are not federal states;

(b) In respect of Articles which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent States, Provinces or Cantons, the federal government shall bring such provisions, with a favourable recommendation, to the notice of the appropriate authorities of the States, Provinces or Cantons.

The Working Group on Implementation was confronted at the outset with the objection of the representative of the Ukrainian Soviet Socialist Republic that since the principal task of implementation "would lie in bringing the domestic law of some countries into conformity with the provisions" of the Covenant, discussion of implementation was premature. The Group decided that it could formulate general principles of implementation irrespective of the ultimate contents of the Covenant. The Ukrainian representative refused to participate further.⁹

The recommendations of the Group were cast in the form of replies to

⁹ See E/600, pp. 42-43; E/CN.4/AC.4/SR/1-3.

certain questions (A, B, C, D) and of comments on certain suggestions (a, b, c, d, e) by the Secretariat of the United Nations.¹⁰

On Question A, which was whether or not the Covenant "should contain a provision to the effect that it cannot be unilaterally abrogated or modified," the Group agreed unanimously that there should be no such provision since the Covenant was "an international obligation, the violation of which was obviously forbidden by international law."¹¹

On Question B, which was whether or not the Declaration or the Covenant "should include an express statement to the effect that the matters dealt with in it are of international concern," the Group decided that the proposed clause seemed unnecessary. The "domestic jurisdiction" of states referred to in Article 2 (7) of the United Nations Charter, if "rightly" interpreted, observed the Working Group, "only covered questions which had not become international in one way or another. Once states had agreed that such questions should form the subject of a Declaration or Convention, they clearly placed them outside their 'domestic jurisdiction' and Article 2, paragraph 7 became inapplicable."¹²

Whether the interpretation placed upon Article 2 (7) of the Charter by the Working Group will prevail in practice is not certain. In the "minorities" treaty concluded between the Allied Powers and Poland on June 28, 1919,¹³ Poland agreed (Article 1) that certain stipulated obligations for the protection of minorities "shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them"; and, by Article 12: "Poland agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. . . . Poland further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government . . . [and any Member of the League Council] shall be held to be a dispute of an international character. . . ." Contrary to the view expressed by the Working Group, it would seem desirable that the proposed Covenant on Human Rights should contain a provision that its stipulations "constitute obligations of international concern." If the implementation of the Covenant is to be regarded as more than a matter "essentially within the domestic jurisdiction"

¹⁰ See Report of the Drafting Committee, Annex H, Memorandum on Implementation prepared by the Secretariat, E/CN.4/21, pp. 87-97.

¹¹ E/600, p. 43.

¹² E/600, p. 43.

¹³ United States, *Foreign Relations, Paris Peace Conference, 1919*, Vol. XIII, pp. 791, 798, 801.

of a state, a firm legal basis must be laid for the expression of international concern.¹⁴

Question C (whether or not the Covenant "should become part of the fundamental law of States accepting it") and Question D (whether or not the Covenant "should be declared to be directly applicable in the various countries without further implementation by national legislation or transformation into national law") were considered together by the Group. After consultation with Mr. C. Wilfred Jenks, Legal Adviser to the International Labor Office, the Group recommended four conclusions to the Commission: (1) that if, after reference to the constitutional law of each state signing the Covenant, it is concluded that the constitutional law of that state permits "the immediate application within the legal system of the state of treaties ratified, the Working Group considers that this solution should certainly be adopted"; (2) that "special or additional implementation measures may be necessary. Treaties frequently contain provisions calling for action by the legislative or executive organs in the domestic field. These would therefore not be sufficient in themselves and it is obvious that their mere incorporation in the national legislation of the ratifying state does not relieve the latter of the duty to provide for any implementation required"; (3) "wherever this is not precluded by the constitutional law of the ratifying state the foregoing measures should preferably be taken *prior* to ratification"; (4) "where ratification nevertheless occurs before implementation has been assured, there should be a clear understanding that implementation would ensue within the shortest possible time."¹⁵ These conclusions, which the Working Group characterized as "recommendations, not yet drafted, embodying principles,"¹⁶ were submitted to the Commission along with a modified Australian suggestion that the provisions of the Covenant must be a part of the laws of states ratifying it "so that no executive or legislative organs or [of?] government can over-ride them, and that the judicial organs alone shall be the means whereby the rights of the citizens of the States set out in the Bill [Covenant] are protected."¹⁷

¹⁴ Compare Article 18 of Professor Lauterpacht's draft: "This International Bill of Rights of Man is hereby declared to be an integral part of the Law of Nations. It is placed under the guarantee of the United Nations. . . . Its observance shall be a matter of concern to all the United Nations." H. Lauterpacht, *An International Bill of the Rights of Man*, 1945, p. 73, with comment, pp. 194 ff.

¹⁵ E/600, pp. 44-46. Italics in original. Compare Article 15 of Professor Lauterpacht's draft: "Every State shall, by appropriate constitutional means, adopt Part I of this International Bill of Rights of Man as part of its domestic law and constitution. The effect of such adoption shall be to abrogate any existing statute or any other rule of law inconsistent with these Articles. . . . They shall not be abrogated or modified by legislative action or otherwise, save in pursuance of international agreement or authorization." Lauterpacht, cited, pp. 72, 179 ff.

¹⁶ E/600, p. 46.

¹⁷ E/600, pp. 44, 46.

International measures for the implementation of the Covenant on Human Rights might well start from the premise that certain obligations to this end have already been assumed in the Charter of the United Nations. Thus, by Article 55 of the Charter, "the United Nations shall promote: . . . (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." By Article 56, "All Members pledge themselves to take joint and separate action in coöperation with the Organization for the achievement of the purposes set forth in Article 55"; and, by Article 62 (2), the Economic and Social Council "may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."¹⁸

Measures of international implementation were considered by the Working Group on the basis of the Secretariat Memorandum which suggested "the possibility of providing in successive stages for international supervision and enforcement" of the Covenant, as follows:

(a) the establishment of the right of the General Assembly and other organs of the United Nations, including possibly the Commission on Human Rights, to discuss and make recommendations in regard to violations of the Bill [Covenant];

(b) the establishment of the right of individuals to petition the United Nations as a means of initiating procedure for enforcement of human rights;

(c) the establishment of a special organ of the United Nations with jurisdiction and the duty to supervise and enforce human rights *motu proprio*;

(d) the establishment of jurisdiction in this organ to consider cases of suspension of the Bill of Rights, either in whole or in part;

(e) the establishment of local agencies of the United Nations in the various countries with jurisdiction to supervise and enforce human rights therein. The Commission might find it useful, in this connection, to study the precedents established, for example, by the Convention between Germany and Poland on Upper Silesia of 15 May 1922.¹⁹

In connection with suggestion (a) the Working Group, after emphasizing the jurisdiction of the General Assembly under Article 10 of the United Nations Charter and of the Economic and Social Council under Article 62, recommended the delegation to the Commission on Human Rights of general supervision over matters affecting human rights and their implementation.²⁰

With reference to suggestions (b) and (c) the Working Group recommended that "the right to petition in respect of the violation of human rights shall be open not only to states, but also to associations, individuals

¹⁸ See also E/CN.4/AC.4/1, Letter from the Representative of France to the . . . Working Party on Implementation . . . , 5 December 1947.

¹⁹ E/CN.4/21, p. 88.

²⁰ E/600, pp. 47-49.

and groups";²¹ "that provisions relating to the system of petitions should be included in the proposed Convention on Human Rights";²² and that a standing committee of five non-governmental experts should be established by the Economic and Social Council to collect information, to screen petitions, to conduct negotiations (query: with whom?) and to act prior to any international judicial proceedings for the enforcement of human rights.²³ Reference was made to comparable functions performed by the League of Nations in respect of the protection of minorities.

Suggestions (d) and (e) were dismissed by the Working Group, the latter on the grounds that it was premature and might deter states from ratifying a Covenant in which it was embodied.²⁴

The Working Group recommended that an International Court of Human Rights should be established and "empowered to constitute the final guarantor of human rights"²⁵ but preferred to leave the implementation of decisions of this Court to the General Assembly rather than to the Security Council.²⁶

The pattern of implementation favored by the Working Group may be summarized as follows: (1) domestic measures of implementation should consist in making the provisions of the Covenant the enforceable law of the land; (2) international implementation would include the general supervision of the Commission on Human Rights, the conciliation functions of the Standing Committee on Human Rights, and the judicial function of the International Court of Human Rights to give judgment against violators of human rights.²⁷ The Report of the Working Group was not formally

²¹ Same, pp. 49-51.

²² Same, pp. 51-53.

²³ Same, pp. 53-56.

²⁴ Same, p. 56.

²⁵ Same, pp. 58-62.

²⁶ Same, p. 63.

²⁷ Query whether it is intended that the proposed court give judgment only against States, or whether employers or other individuals might be adjudged violators of human rights.

Compare Article 5 of the United States Proposal for a Human Rights Convention (E/CN.4/37):

Article 5. The High Contracting Parties agree that any allegations made by any of them of the violation of the present convention shall be brought to the attention of the United Nations by communication of the allegations, together with supporting documentation, to the Secretary-General of the United Nations.

When the Secretary-General is in receipt of a communication from a state he shall inform the state in which the violation of the convention is alleged to have occurred and shall request such state to submit its observations on the complaint. The High Contracting Parties agree to comply with such a request. The communications and the observations of the state shall then be referred to the Commission on Human Rights. The Commission on Human Rights shall establish from time to time small committees to give consideration to each case thus placed in its hands. The small committees shall be composed of nationals of states which are not parties to the case and have no direct interest therein by reason of ethnic or geographical considerations but are parties to the convention. They shall if

"approved" by the Commission on Human Rights but was "received and noted" and transmitted to states and to the Economic and Social Council for consideration and comment.²⁸

Mr. Koretsky, who appeared at the last meetings of the Working Group as an Observer for the Soviet Union, observed "that the measures proposed by this group were contrary to the principles of the sovereignty and independence of states, that they opened the possibility of intervention in the internal affairs of states, and that they therefore were not in conformity with the principles of the United Nations and were unacceptable"²⁹ and that "he himself did not belong to a people who did not have confidence in their government."³⁰

No reference has been made in this comment to the specific human rights which it is proposed to implement.³¹ In voting against the Draft Covenant, the Yugoslav representative observed that "it merely contains definitions of a certain number of civil and political rights and omits all reference to social, economic and other rights" and that it was prepared "mainly with a view to bringing it into line with the laws at present in force in two countries: the United Kingdom and the United States."³²

possible be members of the Commission on Human Rights (including, if appropriate, one or more members of any of its Subcommissions).

Each small committee in collaboration with the Secretariat, shall undertake any appropriate measures looking to a solution of the case. In particular the High Contracting Parties agree to lend their full and friendly coöperation to the Committee in respect of:

1. Requests for further information.
2. Requests to negotiate informally with the Committee at the seat of the United Nations, in the territory or state concerned, or elsewhere, with a view to reaching an agreed settlement.

The High Contracting Parties agree to comply with any decision of the small committee to conduct its proceedings without publicity.

The small committee shall bring the case to the attention of the Commission on Human Rights or the appropriate Subcommission only if it decides by majority vote that further consideration by the United Nations is desirable. If the small committee decides not to bring the matter to the attention of the Commission or a Subcommission, the High Contracting Party which brought the complaint may then bring the matter to the attention of the Commission or Subcommission.

If an alleged violation of this Convention is brought to the attention of the Commission on Human Rights or a Subcommission thereof pursuant to the preceding paragraph, the small committee shall submit a report on its consideration of the case. The United Nations may then take any action appropriate under the Charter.

Following disposition of a case by a small committee, any party hereto may request the Economic and Social Council or the General Assembly to obtain the advisory opinion of the International Court of Justice thereon and to refrain from taking any further action on the matter until this opinion has been obtained, and if such a request is made the parties hereto agree that they are bound to support the request.

²⁸ E/600, p. 7.

²⁹ Same, p. 67.

³⁰ E/CN.4/AC.4/SR.7.

³¹ See Part II of the Draft International Covenant on Human Rights, E/600, pp. 31-35.

³² E/CN.4/56, 11 December 1947, Report of the Working Party on an International Convention on Human Rights.

Even if totalitarian prejudices about British or American conceptions of civil liberties are discounted, it is obvious that a tremendous task lies ahead. Questions of international law, constitutional law, administrative and judicial procedures, private law, politics, economics, and conflicting ideologies must be worked out before agreement can be reached on the nature, definition, and scope of the rights to be implemented and the domestic and international measures by which the rights may be enforced. The project of making the individual a subject of international law with enforceable "international" rights against his own government—which is what the Covenant on Human Rights proposes to do—is in its infancy. Few will question the desirability of focussing attention on human rights and fundamental freedoms; and this the United Nations Commission on Human Rights is already accomplishing.

HERBERT W. BRIGGS

PALESTINE AND THE CONSTITUTIONAL LAW OF THE UNITED NATIONS

Before the meeting of the Security Council on February 24 of this year the United States Representative made a statement on the Palestine question which is deserving of consideration by international lawyers. The comments which have appeared concerning this speech have not approached it from this viewpoint; on the contrary, they reflect varied political and emotional viewpoints which do not show awareness of the true situation or awareness of the significance of this very carefully prepared address. Attention is here called to what are believed to be the key word of the address:

While we are discussing the problem of Palestine, it is of first importance to the future of the United Nations that the precedent to be established by the action taken in this case be in full accord with the terms of the Charter under which we operate. The interpretation of the terms of the Charter given in the Palestine issue will seriously affect the future actions of the United Nations in other cases.

In the proceedings of the United Nations thus far no great respect has been paid to the constitutional law of the Organization by its organs or by its Members, and it is a matter of some significance that the United States now emphasizes the need of respect for that law.

Senator Austin correctly stated the law of the Charter as it applies in this case. It is clear to any student of the Charter that a resolution of the General Assembly, such as that for the partition of Palestine, is no more than a recommendation, and that it can have no legally binding effect upon any state whatsoever. Some enthusiasts would simply disregard restrictions such as are imposed by the Charter upon the General Assembly; others, sincere believers in the United Nations, hoped that the Charter could be stretched by interpretation in some way such that the

General Assembly would be able to enforce its recommendations, and feared for the prestige of the United Nations if this could not be done. A similar attitude is to be observed in other connections, such as Human Rights.

Unfortunately for this viewpoint, the General Assembly was given no such authority; and if the Charter were being made over again today in the light of acquired knowledge, it is still to be doubted that states—particularly the United States—would be willing to confer upon it such authority. If the General Assembly should have attempted to enforce its recommendations, it would thereby have displayed scorn for the Charter—as it had in fact already done on various occasions with respect to the “domestic questions clause”—and would have given ground for just complaint by Arab or other states of illegality, thereby worsening the political situation. To those who had hoped to see a legal order developed among nations through the United Nations the disregard thus far shown by Members and organs both for the constitutional law and for judicial process has been discouraging; the situation has indeed gone so far as to arouse anxiety expressed by some delegates in their speeches.

The refusal of the Department of State—which had itself not been entirely guiltless in this respect, as, for example, in the Iranian case—to submit to a strong pressure calling for enforcement of the Assembly resolution is therefore a hopeful sign. At the same time, Senator Austin made a constructive suggestion, entirely correct under the Charter, which would permit upholding the authority of the United Nations. He noted that, while the partition resolution could not be enforced, by the Security Council any more than by the General Assembly, it is not only the right but the duty of the Security Council to prevent threats to the peace. Little limitation was set upon the discretion of the Council in determining what is a threat to the peace. It would assuredly be expected to regard as such a threat any use of armed force against the contingent Jewish state from the outside, and to employ enforcement measures against such a danger; it could also, if it wished, denominate as a situation threatening to the peace the use of force within that area. Such action would not constitute enforcement of an Assembly resolution; it would have an entirely different legal basis. However regrettable it may be, no organ of the United Nations is given power to enforce a rule of international law, much less a mere recommendation by the Assembly. Enforcement can only be used in the case of a threat to the peace, breach of the peace, or act of aggression. The prevention by the Security Council of the use of force in the Palestine area might leave the factual situation to develop in the direction which the General Assembly planned; but this would not necessarily follow. It must be recalled that the Security Council, under Article 39, may make a recommendation of its own, which might be quite different from the Assembly resolution; likewise the Security

Council determines when the threat to the peace is ended, and may therefore withdraw its forces upon its own terms.

This distinction between enforcement of an Assembly resolution and the handling of a threat to the peace has been attacked as escapism, as "elaborate legal niceties," as a too finely drawn technical distinction; but it is much more than this. It signifies that proper respect is being paid to the constitutional law of the United Nations. Some of the states which made that law now regard it, in this or other cases, as too weak, and in their desire to overcome this weakness would make it still weaker by disregarding the law; those same states—or individuals who argue along these lines—would undoubtedly rely upon these same constitutional limitations in cases in which they might happen to be the defendant. It is an unhappy choice which we are now being called upon to make, as between an obviously inadequate legal system and political action taken in disregard of the law which we have adopted. Those who wish for the United Nations to be a legal order must, while allowing a wide range of interpretation, in general support the law as it is written; and this the United States has done. A precedent in the other direction might later be used with damaging effect against the state which supported the precedent.

The remedy for this dilemma is of course to strengthen the law of the United Nations, and it remains to be seen whether the United States will take steps in this direction. Such steps can hardly be taken, in a democracy, unless the people express support for them. It is, therefore, of no avail to speak of the United States proposals with regard to the Palestinian situation as "futility." If the United Nations is weak, it is because the people do not instruct their governments to give authority over them to the United Nations. It was the same failure to support and strengthen the League of Nations which led to its failure.

One may hope that the position now taken by the United States indicates on her part an intent to return to recognition of her responsibility to coöperate through the law and machinery of the United Nations, and an abandonment of the policy of unilateral action displayed in the "Truman Doctrine," the Marshall Plan (in other respects excellent), and in other ways. The statement is now that

United States policy will not be unilateral. It will conform to and be in support of United Nations action on Palestine.

CLYDE EAGLETON

THE UNANIMITY RULE IN INTER-AMERICAN CONFERENCES

The acute controversy with respect to the "veto power" of the five permanent members of the Security Council of the United Nations may justify some observations upon the voting procedure in inter-American

conferences and consultative meetings of Foreign Ministers. At the San Francisco Conference the Argentine delegate led a strong attack upon the principle of unanimity in the Charter of the United Nations while at the Conference of Petropolis a delegate of the same state argued in favor of the principle in inter-American relations. How are the two positions to be reconciled, if reconcilable at all? The question might be correctly put by asking, when is unanimity not equivalent to a veto, if ever.

The distinction between unanimity which obstructs and unanimity which does not obstruct is traditional in international law. The long-established doctrine of the equality of states prohibits the imposition upon any state of a new rule of law to which it has not given its individual consent. Whether the rule is a desirable one at this stage of the development of international law is another question. But in any case it has never prevented a smaller or larger group of states from going ahead on their own account and adopting a new rule of substantive or procedural law applicable within their limited group. Obviously the new rule must not conflict with the rights of non-participating states under the existing law and it is here that the possible obstructive character of the rule of unanimity is tested. Again and again groups of states have entered into international conventions for the promotion of economic and social interests without being seriously impeded by the failure of one or more states to coöperate. On the other hand the decision of the League of Nations to impose sanctions upon Italy in 1935 could not have been made effective, even with the fullest coöperation on the part of the individual members of the League, if the United States had insisted upon continuing its normal trade relations with Italy in respect to shipments of oil.

A recent lecture by Professor Brierly on "The Covenant and the Charter" brings out effectively the distinction between the two statutes in this connection. Decisions of the Assembly or of the Council of the League required the agreement of all the members of the League represented at the meeting. But there was nothing to prevent the individual members of the League from acting independently in their own interest; and no member of the League resorting to war in disregard of its obligations under the Covenant could protect itself against sanctions by appeal to the rule of unanimity. By the Charter of the United Nations, however, the Security Council is made primarily responsible for the maintenance of peace, so that the use of the veto to prevent a decision is an effective check upon action by the individual members of the United Nations unless they happen to be directly attacked.

Down to the time of the Conference of Petropolis the inter-American rule of unanimity had never had the effect of obstructing the decision of those members of the regional group which wished to act for themselves. But the rule had never been put to a test in any matter of vital concern. When, however, the time came to draft a treaty to put into effect the inter-

American system of collective security it was clear that a number of the sanctions set forth in the Act of Chapultepec were of a character to require unanimity if they were to be made practically effective. Moreover it was clear that in so important a matter as the measures to be taken to maintain collective security, whether against an attack from without the hemisphere or against one within it, the decision of a mere majority would not have the necessary authority to justify the action agreed upon if it should be of a drastic character. In consequence the conclusion was reached that it would be desirable to adopt a new rule, in accordance with which a majority of two-thirds might be able to bind all the states, so that the measures taken would represent the will of all the members, saving only the state guilty of the act of aggression.

The answers to the questionnaire submitted to the Governments by the Governing Board of the Pan American Union on this point indicated a practically unanimous opinion in favor of decisions by a two-thirds majority. Uruguay was in favor of decisions by an absolute majority, while Argentina favored strict unanimity. A compromise was proposed in accordance with which decisions binding upon all might be taken by vote of two-thirds, except only with respect to the use of armed force, in which case no state should be obliged to take action except with its own consent. This compromise was accepted in the treaty as finally signed at Rio de Janeiro. The Argentine delegate defended the position taken by his Government, but yielded to the views of the other delegates and signed the treaty without reservation.

Thus for the first time in inter-American history the rule of unanimity, in the sense that no state is bound by a decision to which it does not give its consent, is set aside in respect to decisions taken in pursuance of the terms of the Rio de Janeiro treaty, involving the determination of an act of aggression and the measures to be taken to meet it, with the single exception above noted. But even with respect to the obligation to use force there is no element of the veto right conceded to the five permanent members of the Security Council of the United Nations. The fact that one or more states might decline to contribute armed forces in a case of collective defense against aggression would not prevent others from contributing on their own account. The burden might be heavier for the others, but they would not be prevented from carrying it. There is no obstructive veto retained by any state equivalent to the veto power assigned to the five permanent members of the Security Council.

C. G. FENWICK

DRAFTS OF INTERNATIONAL COVENANT AND DECLARATION ON HUMAN RIGHTS

The United Nations Charter contains a number of provisions expressing the purpose of the United Nations and its members to respect and protect human rights and fundamental freedoms. In Article 56 of the Charter the

member nations pledge themselves to take joint and separate action in co-operation with the organization for the achievement of this purpose. The Economic and Social Council has constituted a Human Rights Commission with responsibility to prepare an international bill of rights. This Commission at its second meeting in Geneva at the close of last year prepared two draft documents, a Draft International Covenant on Human Rights and a Draft International Declaration on Human Rights. These were published on December 17, 1947.

These documents have been circulated to the member nations who now are called upon to express their opinions with regard to them. When the comments have been received they will be studied by the Drafting Committee of the Commission this Spring. Revised drafts will be presented to the Commission which will make its recommendations to the Economic and Social Council. It is presently contemplated that the results will be submitted to the General Assembly for final action at its next regular session in September, 1948.¹

The Draft Covenant is divided into three parts. Part I sets forth a declaration by the subscribing states that they recognize the principles set forth in Part II (Article 1) and an undertaking to ensure the enjoyment of these rights and to provide adequate remedies for their enforcement (Article 2). Part I also obligates such states to advise the United Nations, on request from the General Assembly, how its laws give effect to this obligation (Article 3) and permits measures derogating from the obligations under Article 2 in time of war or other emergency.

Part II sets forth the principles referred to in Article 1. These principles may be summarized broadly as covering a right not to be deprived of one's life or liberty without due process of law and rights to freedom of religion, expression, assemblage and association, and to freedom from discrimination with respect to the foregoing rights.

Part III provides for the method of accession to the Covenant and that it shall become effective on the accession of two-thirds of the members of the United Nations (Article 23), and the method and extent of its application to federal states (Article 24) and overseas territories or colonies (Article 25). It also provides for amendment by two-thirds vote of the General Assembly and ratification by two-thirds of the parties (Article 26).

The Draft Declaration contains only a series of articles, each setting forth a principle. These principles include those covered by the Covenant and in addition a number of additional principles such as equal opportunity for public employment (Article 22), the right to work (Article 23), the right to pay for work (Article 24), the right to health and housing (Article 25), the right to social security (Article 26), the right to education (Articles 27, 28), the right to rest and leisure (Article 29), and the

¹ Report of Commission on Human Rights, Second Session, United Nations Publications E/600, page 6; United Nations Bulletin of January 15, 1948.

right to participate in cultural life (Article 30), together with a provision regarding minorities, as to which alternative texts are submitted (Article 31).

These drafts present to the member nations a series of important questions for decision. The first and perhaps the most important relates to the scope which any such document should encompass. What rights should be considered as really basic and fundamental; which are merely matters of detail; what rights are generally accepted in the international community; which are peculiarly identified with the history and traditions of one nation or a particular group of nations? This question is pointed up by the second question, namely, whether it is preferable to have a covenant or a declaration. The two questions are so closely related that they should be considered together.

Since a covenant or treaty is designed to be binding upon the signatory nations whereas a declaration is merely an expression of intention or aspiration, it is reasonable to assume that a treaty would be narrower in scope than a declaration. This is definitely the case in regard to the two documents prepared by the Human Rights Commission. The Draft Covenant is pretty definitely limited in its coverage to the character of rights familiar to Americans and covered by our own Constitution. The Draft Declaration covers a much wider variety of subjects, particularly in the social and economic fields.

The great risk in having only a declaration would appear to be that there would be a certain degree of irresponsibility as to its terms. Nations might support it with comparative ease since they would not be obligated; for this reason they might feel relatively little obligation to put it into effect. It would thus be a mere statement of aspirations. Such an instrument might prove to be more of a basis for propaganda and controversy than a document of fundamental importance. Faced with a choice as to whether or not to support a more restricted but binding agreement on the one hand and a far broader declaration on the other, the choice for those interested in the sound development of international institutions and international law would appear to lie on the side of a Covenant.

The choice as between a covenant and a declaration is, however, affected by another consideration and that is the likelihood that a greater number of nations would be prepared to vote for and support a declaration than the number which would be prepared to bind themselves to a definite covenant or treaty. The text of the Draft Covenant provides that it shall be effective on the accession of two-thirds of the members of the United Nations. It might prove impossible to obtain the necessary two-thirds accession to make the Covenant effective or, even though effective, members of the United Nations whose participation is of prime importance might not accede. If the choice should for this reason be a declaration rather than a Covenant, it would still appear important that its terms be so con-

fined as to be generally acceptable and generally applicable throughout the world to peoples of all traditions and in all stages of social development.

One solution that may commend itself to the negotiators is to have both, making the Declaration effective immediately and the Covenant only effective when sufficient ratifications have been obtained. In such event it might well be provided that the Declaration should be superseded by the Covenant when it becomes effective. Thus it would be possible to avoid the risk that two competing documents might be in existence at the same time, one broader in terms but less binding in effect, the other binding but narrower in its terms.

There remain certain important questions with regard to the Covenant which are not applicable to the Declaration.

The Draft Covenant does not contain at the present any provisions with regard to implementation or enforcement other than the provision in Article 3 requiring a party, on request from the General Assembly, to explain how it is carrying out its obligations. At the same time it is a document which purports to create rights under international law in favor of individuals just as the Nuremberg Trials enforced against individuals duties under international law. Whether or not the member nations would be prepared to permit individuals and private associations directly to enforce their rights or seek redress before an international tribunal or agency, or whether such action could only be taken in their behalf by a member state, cannot at this time be answered.²

Even more difficult would be the question as to the rights to be accorded to the citizen of a non-participating state. Since the rights to be protected are fundamental human rights, it would appear, at first glance, that the citizens of a non-participating state should have the same rights as those accorded to any other human being. There would also appear, however, to be possibilities of trouble inherent in permitting the citizen of one country to bring a nation before the bar of justice for its failure to accord to him rights and privileges which cannot be enjoyed in his home state. The traditional doctrine of reciprocity seems persuasive. This would restrict the right to initiate enforcement action to the United Nations or a member which is a party to the Covenant.

A final question of importance relates to the applicability of a Covenant of this sort to a federal state. Insofar as the rights protected by the Covenant are such as under the United States Constitution, no state may infringe as regards individuals,³ there is no problem and American negotia-

² Additional measures to implement the Covenant are under consideration. They would assure the right of individuals and of associations to petition the General Assembly in case of violations; they also envisage special agencies to supervise and enforce the performance of the Covenant and the establishment of an International Court of Human Rights (see Report of the Working Group on Implementations; Report of the Commission on Human Rights, Second Session (*supra*); Annex C, p. 41).

³ See *Palko v. Conn.*, 302 U. S. 319, 325.

tors would seem wise to keep the Covenant within this area. The Draft Covenant contains a provision respecting federal states to the effect that where the subject matter is within the jurisdiction of the component states rather than the federal government the member fulfills its obligation if it merely calls to the attention of the state the terms of the treaty with a favorable recommendation.⁴ Such a provision is probably a useful and necessary protection to federal states, but it would seem unfortunate if the scope of the Covenant were so broad as to call for its invocation to any great extent.

The phraseology of both documents gives evidence of the fact that they were drafted in a relatively brief time by draftsmen familiar with different systems of law. It could be improved and presumably will be by the Drafting Commission. Far more important, however, is it that the important questions of policy and international and constitutional law which these documents, particularly the Covenant, raise should be the subject of adequate study.

JOHN E. LOCKWOOD

LEGAL POSITIVISM AND THE NUREMBERG JUDGMENT

The favorable or unfavorable character of comments upon events related to international law often depends less upon the nature of the events than upon the theory of international law assumed by the commentator.

The assumptions underlying the Charter of the United Nations, the Statute of the International Court of Justice, and the Charter of the Nuremberg Tribunal are far removed from the positivistic assumptions which greatly influenced the thought of international jurists in the nineteenth century.¹ Consequently, the activities of those institutions have frequently been vigorously criticized by positivistic jurists.

Positivism tends to assume that the sovereign state is the only subject of international law; that it is under no obligations except those which it has accepted by valid agreement or clear acquiescence in a general custom; that such obligations are to be narrowly construed under the assumption that consent to qualifications of sovereignty cannot be assumed; and that consequently concrete obligations cannot be implied even from formal consent to general principles.² Critics proceeding from these as-

⁴ Article 24.

¹ Arthur Nussbaum holds that dissatisfaction with "positivism" was "the most notable feature" differentiating 20th from 19th century thought in the field. *A Concise History of the Law of Nations*, New York, 1947, p. 274.

² Opinions designated as "positivism" have varied considerably. The earlier "positivists" were distinguished from the "naturalists" and the "Grotians" by the fact that they gave major weight to the practice of states in determining what norms were international law, but 19th century "positivists" usually rejected the conception of natural law altogether and sought to distinguish law, as rules which are objectively sanctioned, from both ethics and policy. As a result jurists like John Austin denied

sumptions have asked: How can principles enunciated by the Nuremberg Tribunal, to take it as an example, be of legal value until most of the states have agreed to a tribunal with jurisdiction to enforce those principles? How could the Nuremberg Tribunal have obtained jurisdiction to find Germany guilty of aggression, when Germany had not consented to the Tribunal? How could the law, first explicitly accepted in the

that international law was "law" and others held that it was only law in so far as the sovereign states (whom it was assumed alone had power to enforce rules and thus to make them "law") could be relied upon to observe and enforce its rules. Such reliance in the opinion of writers like Jellinek was hardly justifiable except in the case of rules which the state had explicitly accepted by an act of "Auto-limitation" (Nussebaum, work cited, pp. 212, 281). Most of the 19th century "positivists," however, thought that general custom, giving evidence of practical expediency or generally accepted moral standards, gave sufficient sanction to justify calling a rule "law" (W. E. Hall, *International Law*, 1924 (8th ed.), pp. 5-6). Twentieth century "positivists" have usually insisted that international law, like all jural law, deals not with *what is* as does physical law, but only with *what ought to be*. They add, however, that it does not concern rules which ought to be *subjectively* but only with those which ought to be *objectively* because the legal order has sanctioned them. Among these writers some like Anzilotti base international law on the common will of two or more states to be bound by a rule. This common will is in their opinion, manifested by agreements which create a law, not of *subordination* but of *coördination*, sanctioned by regulated self help (Angelo Sereni, *The Italian Conception of International Law*, 1943, p. 213). Some like Kelsen derive international law from exercise by a state, a group of states or an international agency of law making power delegated by the ultimate norm of the legal system. In his present opinion this ultimate norm is the rule that international custom shall have binding force. Formerly he regarded the rule *pacta sunt servanda* as that *grundnorm*. Kelsen, therefore, holds that there is only one legal system in the world. He is an international "monist." Anzilotti, on the other hand, is a "dualist." To him the ultimate fact behind the law is not the existence of the world order defined by normative customs but the existence of sovereign territorial states limited only by the norm *pacta sunt servanda*. International law and the law of each state are, therefore independent legal systems, the one resting on international agreements, the other on the exercise of sovereign legislative power. The two may be in conflict although the state in accord with the international norm ought to legislate to give effect to its agreements, thus bringing the two into harmony. Kelsen denies the possibility of such conflict because he considers the state to be not a sociological entity with original legislative power but merely a complex of legal norms—a constitution which is valid only in so far as it expresses competences derived from international law. Apparent state legislation contrary to international law is therefore, *ultra vires* and void (Hans Kelsen, *Law and Peace in International Relations*, 1942, pp. 66, 113. Nussebaum, work cited, p. 285; H. Lauterpacht, "Kelsen's Pure Science of Law," in *Modern Theories of Law*, 1933, p. 125; Josef Kunz, "The Vienna School and International Law," in *N. Y. U. Law Quarterly Review*, March, 1934). Kunz, who, in the main, follows Kelsen, places "the dogma of state sovereignty" in the very center of the theory of international law but not because of theoretical necessity but because the world legal community defined by international custom is still a very primitive society which has delegated law making authority to the states with little limitation ("The Theory of International Law," in *Proceedings of American Society of International Law*, 1938, p. 30. See also Kelsen, work cited, pp. 51, 121).

Nuremberg Charter of 1945, have bound the defendants in the trial when they committed the acts for which they were indicted years earlier.

These critics sometimes overlook the devastating effect a narrowly positivistic interpretation of international law would have, and, in fact, has had, upon the possibility of that law's adapting itself to rapidly changing conditions, or even upon its utility for solving current disputes. Rigorously applied, positivism reduces international law to such small proportions that it is able to deal with few disputes, and the community of nations is in principle a slightly attenuated anarchy. While it may be admitted that a state equipped with an operative legislative procedure can leave the adaptation of the law to the legislature and require the courts to be "positivistic," such a division of labor is not practicable in the world community, which lacks a workable legislative authority. In such a situation the law must have within itself the means of its own change, and that element is what the seventeenth century jurists called "natural law" and which in modern terminology can perhaps be better expressed by the word "justice" as interpreted by predominant world opinion.⁵

If it is said that the positivistic conceptions of international law express the reality of the present situation, it may be answered that the reality of a legal situation is in no small measure the product of the prevailing opinion about the nature of law. If general opinion throughout the world presumes that sovereign states are under no obligations except those they have explicitly accepted, then international relations will be little affected by a sense of legal obligation. It is for this reason that periods of jural positivism have been periods of jural pessimism, in which men see little hope of improvement through the law. Unless men believe in justice and the possibility of realizing it through law, there is not likely to be much either of justice or of law.⁶

The international institutions which have developed since the First World War have manifested a belief in justice, both in their formal charters

⁵ See for example F. B. Schick, "The Nuremberg Trial and the International Law of the Future," this JOURNAL, Vol. 41 (1947), p. 770.

⁶ Several writers have commented on the influence of Austinian positivism. See J. B. Moore, *International Law and Some Current Illusions*, 1924, p. 292; H. Lauterpacht, "Allegiance, Diplomatic Protection, and Criminal Jurisdiction over Aliens," in *Cambridge Law Journal*, 1947, p. 330.

⁷ "The new invocation of the natural law simply expressed the growing awareness of the fact that treaties and custom cannot tell the whole story of international law, and that a decision on controversial issues can be found only by a process of reasoning which, in addition to the given positive material, includes within certain limits considerations of justice and equity" (Nussbaum, work cited, p. 275).

⁸ Lauterpacht attributes much of Grotius's influence to his exemplification of this attitude. "The Grotian Tradition in International Law," in *British Year Book of International Law*, 1946, p. 51. See also Roscoe Pound, "Philosophical Theory and International Law," in *Bibliotheca Visseriana*, Vol. I (1923), p. 71.

and in their practice. The creation of each of these institutions has been an act of faith under conditions in which realization of the faith was by no means certain. (This is particularly true of the Nuremberg Charter. It rests on the assumption that the enunciation of principles of justice can be creative, that such principles are a source of law, and that they may generate institutions which can enforce the law.) While the capacity of the Nuremberg Tribunal itself to enforce its principles was limited to the major war criminals of the European Axis, the resolutions of the United Nations General Assembly and the discussions in the United Nations Committee on the Progressive Development of International Law indicate progress in widening the practical applicability of these principles.)

The same assumption was implied by the recognition in the Statute of the Permanent Court of International Justice and that of its successor, the International Court of Justice, of "general principles of law recognized by civilized nations" as a source of international law and of "judicial decisions and the writings of the most highly qualified publicists of the individual nations" as subsidiary means for determining rules of law. The jurists who adopted these formulas in 1920 repudiated jural positivism and accepted the Grotian thesis that international law rests not only upon the practice of states, but also upon rational deduction from the principles of justice to which they aspire. The makers of the Statute recognized that international law should not be limited by the positive consent of states, but should be capable of developing through juridical deduction from normative principles endorsed by prevailing world opinion.

(From this point of view general acceptance of the propositions that resort to aggressive hostilities by a government is unlawful and that individuals have certain rights and are subject to certain liabilities, irrespective of the national law under which they live, can provide the basis for important developments in international law.) The World Court, the League of Nations, and the United Nations have been developing these principles in the expectation that this process will yield an international law better adapted than the positivistic international law of the nineteenth

¹ Wellington Koo, Jr., "Some Aspects of the Work of the Legal Committee of the General Assembly during the Second Part of the First Session," in this JOURNAL, Vol. 41 (1947), p. 639; also *Report of the Committee on the Progressive Development of International Law and its Codification, Plans for the Formulation of the Principles of the Nuremberg Charter and Judgment*, in the same, Supplement, p. 26.

² Manley O. Hudson, *The Permanent Court of International Justice, 1920-1942*, 1943, p. 194. The subcommittee of this committee in reporting the Statute to the First Assembly of the League of Nations stated that it was one of the Courts important tasks "to contribute through its jurisprudence to the development of international law" (the same, p. 195). The jurists who reported the Statute of the International Court of Justice to the San Francisco Conference in 1945 stated that Article 38 "has given rise to more controversies in doctrine than difficulties in practice" and suggested no substantive changes. United States, Department of State, *The International Court of Justice, Selected Documents relating to the Draft of the Statute*, 1946.

century to our shrinking, interdependent world, equipped with weapons of increasing destructiveness.⁹ Time alone can tell whether their faith will be justified.

(With this dynamic concept of international law, it is not difficult to justify the Nuremberg proceedings.) That states, individually or collectively can exercise criminal jurisdiction over offenses against the law of nations committed by aliens abroad is familiar doctrine. Over such offenses states have claimed a universal criminal jurisdiction.¹⁰ It is also clear that world opinion regarded the offenses enumerated in the Nuremberg Charter as offenses against the law of nations long before 1939. Evidence is to be found not only in the resolutions and treaties of the inter-war period mentioned in the Tribunal's opinion, but also in historic trials and discussions dealing with such offenses as piracy, banditry, and filibustering, and with the conditions justifying "humanitarian intervention."¹¹ If the acts of the defendants had been committed without the apparent sanction of a generally recognized state, there would have been little grounds for criticism of the procedure on the ground of *ex post facto* legislation, even by the positivists. The real bone of contention is to be found in the Tribunal's statement:

The very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law.¹²

⁹ Josef Kunz has recognized the need for a dynamic law of nations but writing from a positivistic point of view he considers the problem "not a juridical one but a problem of international legislation": "The Law of Nations, Static and Dynamic," in this JOURNAL, Vol. 27 (1933), p. 649. Sir Henry Maine pointed out that in primitive legal systems, a condition which, as has been seen, Kunz unhesitatingly attributes to the international legal system, law cannot progress by legislation but only through the application of "legal fictions" or of concepts of justice and equity by courts (*Ancient Law*, 1870 (4th ed.), p. 15. See also Q. Wright, "Article 19 of the League of Nations Covenant," in *Proceedings of the American Society of International Law*, 1936, p. 55; Lauterpacht, *Private Law Sources and Analogies of International Law*, 1927.

¹⁰ This has never been questioned in the case of piracy and many states exercise universal jurisdiction over other offenses against the law of nations: Harvard Research, *Draft Convention on Jurisdiction with Respect to Crime*, this JOURNAL, Vol. 29 (1935), Supplement, pp. 476-480, 569-572. See also *Resolution of Conference for the Unification of Penal Law*, Warsaw, 1927, in the same, pp. 641-642, and Harvard Research, *Draft Convention on Piracy*, in this JOURNAL, Vol. 26 (1932), Supplement, pp. 751-754; W. B. Cowles, "Universality of Jurisdiction over War Crimes," in *California Law Review*, Vol. 33 (1945), pp. 177-218; Q. Wright, "The Law of the Nuremberg Trial," in this JOURNAL, Vol. 41 (1947), pp. 55-58.

¹¹ The Judgment of Military Tribunal No. III, Nuremberg, Case 3, *U. S. vs. Josef Alstötter et al.*, Dec. 3, 1947, contains a discussion on this point with citation of historic instances and recent discussions of "genocide," Record, p. 10643.

¹² This JOURNAL, Vol. 41 (1947), p. 221.

In opposition to this statement positivists sometimes consider that the very essence of international law resides in the power of the state to adopt the act of its agent and thereby to exempt him from personal liability. Because they think Goering *et al.* had the right to rely on this rule, they think the law of the Charter is *ex post facto*, and because Germany had not consented to the Charter they think the Tribunal had no jurisdiction. Even with a rigorous positivistic theory these conclusions are doubtful but with the broader conception of the sources of international law accepted in the Statute of the International Court of Justice they have no support. The principle that *ultra vires* acts of state are null and void has been recognized in both national and international law. The state cannot protect its agent from the consequences of his act if he acted outside the state's competence under international law. This has long been recognized in the law of diplomatic and consular officers.

There is more doubt whether the Kellogg-Briand Pact actually qualifies the competence of its parties to authorize war. Does the pact mean that if the government of a party by declaration or act resorts to war as an instrument of national policy, its act is beyond the competence of the state, and is, therefore, not an act of state at all, with the consequence that the individuals who acted are individually responsible; or does it mean that the act of the government, if within its constitutional power, is to be considered an act of the state, even though contrary to the state's obligations

¹³ Harvard Research, *Draft Convention on Diplomatic Privileges and Immunities*, Art. 18, and comment, in this JOURNAL, Vol. 29 (1935), p. 97, and *Draft Convention on the Legal Position and Functions of Consuls*, Art. 21, where it is explained that the immunity for acts in the performance of consular functions extends only to "functions which he is entitled to exercise" and that the receiving state decides this in first instance, applying standards of international law rather than the consul's instructions (the same, pp. 338-340). It was not necessary to spell out this limitation in the draft on diplomatic officers because persons enjoy a special jurisdictional immunity while they have diplomatic status in addition to the permanent immunity from liability for official acts. It has usually been said that a state is responsible for acts of its officers injurious to aliens if the act was within the scope of the officer's authority or, in the case of torts by higher officers, if within the color of his authority, as defined by municipal law (E. M. Borchard, *Diplomatic Protection of Citizens Abroad*, 1916, p. 180; Harvard Research, *Draft Convention on Responsibility of States*, this JOURNAL, Vol. 23 (1929), Supplement, p. 157). The question here has concerned the responsibility of the state and not the liability of the officer: That liability may exist under international law even if the state is responsible in case the act was beyond the authority of the state under international law. This is notably true of acts of soldiers who are individually liable for breaches of the law of war although under Article 3 of the Hague Convention on Rules of Land Warfare the state is also responsible. Judges that deny justice to aliens may render the state responsible but they may also be criminally liable if the denial of justice violates rules of war or of international justice (see case referred to in note 11 above and Alwyn V. Freeman, "War Crimes by Enemy Nationals Administering Justice in Occupied Territory," in this JOURNAL, Vol. 41 1947, p. 609.)

under international law? ¹⁴ While it has been common to interpret treaties in the latter sense because of the presumption against cessions of sovereignty, yet the practice of states support the theory that the Kellogg Pact did qualify the legal power of the members to initiate a state of war. The general acceptance of the Stimson Doctrine as an implication of the Pact, and of the policy of discriminating during hostilities between the aggressors and the defenders of the Pact, are evidence of this. These implications would not follow if hostilities, even though initiated in violation of the pact, were nevertheless a "state of war." ¹⁵

If this interpretation of the Pact is adopted, and if the Nuremberg defendants in initiating hostilities acted beyond Germany's powers as qualified by the Pact, there was no act of state which could shield them. Without the character of acts of state their activities had in law, as well as in fact, the character of piracy, banditry, filibustering, and mass massacre. ¹⁶

Germany could not shield the saboteurs in the United States during the war by accepting their acts as its own. Even less could Germany or any other state shield an ordinary murderer in the United States by declaring his act an act of state. There are clearly limits to a government's power to make its acts "acts of state" by calling them so. If the acts of the German government authorizing hostilities were *ultra vires*, they could confer no immunity upon individuals.

The Nuremberg Tribunal had jurisdiction to try individual defendants, but it could not find them liable unless it could determine that the alleged acts of state behind which they sought to shield themselves were *ultra vires* and consequently in fact not acts of state. Did the Tribunal have jurisdiction to decide upon the meaning of the Pact of Paris and its applicability to Germany's behavior? The positivists say that it did not, because it had no jurisdiction over Germany. They cite the authority of

¹⁴ Kunz has stated this view: *Proceedings of the American Society of International Law*, 1938, p. 155.

¹⁵ The Harvard Research *Draft Convention on Aggression* defines the legal consequences of "aggression" which it distinguishes from a "state of war" and draws attention to the fact that the International Law Association, in its *Buda Pest Articles of Interpretation*, assumed that a violation of the Pact of Paris would constitute "aggression" in this sense: this JOURNAL, Vol. 33, (1939), Supplement, pp. 823-826.

¹⁶ This was the argument stressed by Justice Jackson and accepted by the Tribunal. Jackson also advanced the argument that there was no act of state because the Nazi conspiracy to commit crimes against peace began before the conspirators had taken over the German government and that when they did take it over that government was used as an instrument of the conspiracy, consequently could not act independently as a state. The British prosecution argued that Germany was a criminal state and the defendants were guilty as procurers and accessories to its crimes. The Tribunal did not accept these arguments.

the Eastern Karelia opinion to prove that no tribunal can have jurisdiction over a state without its consent.¹⁷

(Waiving the possible answer that Germany gave its consent through the signature of the Nuremberg Charter by the Four Powers to which it had unconditionally surrendered and which were for the time exercising German sovereignty,¹⁸) the answer may be suggested that courts can always determine the effect of treaties and acts of state when necessary to judge the rights and liabilities of individuals under their jurisdiction, even when they have no jurisdiction over the state in question. The Nuremberg Tribunal found that "The solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing"¹⁹ and that "The Pact was violated by Germany in all the cases of aggressive war charged by the indictment."²⁰ After an historical survey of each war, the Tribunal characterized Germany's acts as "aggression" or "aggressive war." It did not, however, make the determinations for the purpose of judging Germany's liability, but only to judge the liability of the individuals over whom it had jurisdiction. From the point of view of that judgment, the findings upon the character of Germany's acts and obligations may be considered findings of fact rather than of law.)

(In this procedure of the Nuremberg Tribunal there was nothing novel. American courts, when faced by the necessity of determining the status of alleged acts of state, whether of the United States or a foreign government, in the course of litigation involving individuals, do not hesitate to reach conclusions. Sometimes, as in determining the extent of national or foreign territory or the existence of a foreign state or government or the status of hostilities or of a person claiming diplomatic immunities, courts regard the matter as political and accept the determination of the President or of the Congress.²¹ At other times, as in determining the meaning or validity of an act of Congress or of a treaty or of the effectiveness of foreign legislation or confiscatory decrees, they frequently make their own judgments on the basis of constitutional or international law.²²

¹⁷ Permanent Court of International Justice, Series B, No. 5; 1 Hudson, *World Court Reports*, p. 204.

¹⁸ See case cited in note 11 above and H. Kelsen, "Legal Status of Germany," in this JOURNAL, Vol. 39 (1945), pp. 518-526 and in *American Political Science Review*, Vol. 41 (1947), p. 1188.

¹⁹ Judgment, this JOURNAL, Vol. 41 (1947), p. 218.

²⁰ The same, p. 216.

²¹ *Williams vs. Suffolk Insurance Co.*, 13 Pet. 415; Post, *The Supreme Court and Political Questions*, 1938.

²² *Salimoff vs. Standard Oil Co. of New York*, 262 N. Y. 220, 1933. Philip Jessup criticizes the Supreme Court for too frequently treating problems as political. "Has

(The fact is that although admitting that they have no jurisdiction over either the United States or the foreign state in question, courts actually determine the effect of acts of state in so far as necessary to determine the rights of the parties before them.)

✓The Nuremberg Tribunal did no more and no less. It did not judge Germany, but it did determine the effect of Germany's acts in so far as necessary to judge the liability of the defendants. ✓It might have treated the matter as political, and have followed the political judgment of the community of nations as to the character of German hostilities. Most of the states of the world, in signing the Declaration of United Nations, had recognized these hostilities as aggression, and many of them, even before entering the war, had declined to enforce neutrality obligations traditionally applicable in the case of "lawful war." ✓The Tribunal might have considered such general recognition as conclusive evidence of the fact that German hostilities were unlawful and that acts initiating them were *ultra vires*. ✓The Tribunal did not pursue that course, but instead examined history and made its own appraisal of the hostilities in each case. (Under the United Nations, the power to decide when hostilities constitute aggression is treated as political rather than as legal, and vested in the Security Council, or, if it fails to act, in the General Assembly. The procedures provided assure that a resolution of either of these bodies would seldom run counter to world opinion.)

Some critics have rejected the possibility of determining the aggressor, either by standards of law or by standards of justice, on the ground that the victor in war will always determine the question favorably to himself. Superior force, they say, is the only criterion. 8

It may be objected, however, that the victor, although superior to the vanquished, may not be superior to the world community. The latter may have the power to judge the victor and to enforce its judgment. Furthermore, even if the war is general, prevailing world opinion may determine not only the relative justice of the action of the two belligerents, but also their relative power. The aggressor usually finds the world aligning against him and behind his victim, and is eventually defeated. While this inherent tendency of world opinion to oppose the aggressor and to develop sufficient power to make that position effective cannot be relied upon, it is believed that the tendency can be demonstrated by the history of war during the past three centuries.

Undoubtedly if an aggressor state should be victorious in a general war, the position of the leaders of the victim states would be hazardous, and the rulers responsible for the aggression would escape prosecution. It is in the confidence that such a situation can be prevented, especially with

the Supreme Court Abdicated one of its Functions," in this JOURNAL, Vol. 40 (1946), p. 168. See also Q. Wright, *Control of American Foreign Relations*, New York, 1922, pp. 171-174.

the instrumentalities of the United Nations available, that the governments of the "peace-loving states" committed themselves to the Nuremberg principles. ✓

The Nuremberg Tribunal, in characterizing Germany's hostilities as aggression, manifested more than the prejudice of the victors. It manifested the overwhelming opinion of the world. ✓ In the last analysis, no better criterion can be found for interpreting the justice and the legal effect of acts of state.

The predominant opinion of the legal community must be the ultimate source of justice, at least if the thesis of democracy is accepted. In a world in transition, positivistic theories which hamper the adaptation of international law to international justice, as thus evidenced, can only bring law into contempt and promote a lawless struggle for survival.²³ ✓

Tribunals must often determine the effect of acts of state, incidentally to judging the liabilities of individuals over whom they have jurisdiction, and in doing so they should pay attention to the opinion of the political organs of the world community as evidence of world public opinion. International tribunals with jurisdiction over states may often make such determinations by direct application of international law, but they are not likely to be given that jurisdiction unless the interested states believe that the international law they apply accords with the conception of justice predominant in world opinion. ✓

QUINCY WRIGHT

²³ "Positive law has always incorporated and does incorporate ideas of natural law and justice" (Lauterpacht, "Kelsen's Pure Theory of Law," p. 137). "Whatever is considered 'just' in the sense of international morality has at least a tendency of becoming international 'law,'" (Kelsen, *Law and Peace*, p. 38).

CURRENT NOTES

SOME OBSERVATIONS CONCERNING JEREMY BENTHAM'S CONCEPTS OF INTERNATIONAL LAW

The theoretical approaches and justifications for international law have run the gamut from divine law to rigid positivism. Those theorists, like John Austin (1790-1859), who hold to the latter persuasion are of the opinion that international law is not true law, but merely a form of comity since it does not emanate from a sovereign and operate directly upon his (its) subjects. Others like Hugo Krabbe (1859-1936) hold that international law is true law because it represents the popular consensus of the world with reference to justice. James Mill (1773-1836) gave impetus to a similar viewpoint when he wrote that international law is true law because it rests on the sanction of world public opinion.

It is of interest to note that Austin and Mill, who both wrote in the Benthamite tradition, came to such nearly opposite conclusions. Of course the distance between these two extremes might be considerably lessened were it observed that the issue, at least in part, resolves itself into a debate regarding the definition of law, and not one concerning the functional aspects of international law.

The observations made in this study, however, are not directed toward a harmonization of these two views, but are rather designed to set forth the views of the founder of the English utilitarian school regarding the theoretical nature of international law, and to suggest, if possible, some conclusions relating to the implications of his thought as reflected in the works of Austin and Mill.

Bowring's¹ collection of the works of Jeremy Bentham (1748-1833) yields four previously unpublished essays and the draft of a scheme to connect the Atlantic and Pacific oceans which are collectively termed the *Principles of International Law*.² While they present an interesting commentary on international relations, they contain little of note concerning the nature of international law.

The first essay, entitled *Objects of International Law*, deals with the causes of war and stresses the "greatest happiness" idea regarding the utility of international law in peacetime and the amelioration of suffering during wartime. The second essay, *Of Subjects, or the Personal Extent of the Dominion of the Laws*, concerns the methods by which nationality should be determined, the times when jurisdiction may be exercised over

¹ Jeremy Bentham, *The Works of Jeremy Bentham* (published under the superintendence of his executor, John Bowring), Vols. I-XI, Edinburgh, William Tait, 1843.

² *Works*, Vol. II, pp. 535-571.

foreigners, and some observations regarding the difficulties involved. Essays three and four, *Of War, Considered in Respect of its Causes and Consequences*, and *A Plan for Universal and Perpetual Peace*, respectively, deal with the causes and sources of war and with a system for the prevention of war involving the giving up of colonies, reducing armies, and the erection of some sort of a European confederation.

These writings indicate that Jeremy Bentham was certainly concerned with international relations, but they do not appear to delve at all profoundly into international law itself.

Regarding terminology, Bentham, in *An Introduction to the Principles of Morals and Legislation*³ (the part dealing with penal matters), refers to internal and international law—reputedly the first time this latter term was used—and the following quotation which appears in the work as a footnote explains his use of the term:

The word *international*, it must be acknowledged, is a new one; though, it is hoped, sufficiently analogous and intelligible. It is calculated to express, in a more significant way, the branch of law which goes commonly under the name of the *law of nations*: an appellation so uncharacteristic, that, were it not for the force of custom, it would seem rather to refer to internal jurisprudence. The chancellor D'Aguesseau has already made, I find, a similar remark: he says that what is commonly called *droit des gens*, ought rather to be termed *droit entre les gens*.⁴

There can be little doubt that Bentham thought of law in the restricted sense now spoken of as the Austinian conception of law. It may be noted in the following quotation that the sovereign authority is the nucleus around which his law is built.

A *law* is a word employed in three different senses, which require to be distinguished: but in each of them it imports that the *will* to which it gives expression either emanates from the supreme authority in the state, or has that same authority for its support.⁵

After assuming this position of positivism, he follows a rather logical chain of reasoning—at least logical in so far as consistency with his basic premise is concerned—regarding the nature of international law. At one point he speaks rather doubtfully of the true legal nature of international law, in the following words:

... There remain, then, the mutual transactions between sovereigns, as such, for the subject of that branch of jurisprudence which may be properly and exclusively termed *international*.

With what degree of propriety, rules for the conduct of persons of this description can come under the appellation of *laws*, is a question

³ *Works*, Vol. I, pp. 1-154.

⁴ *Works*, p. 149.

⁵ *Works*, Vol. III, p. 215. Italics in original.

that must rest till the nature of the thing called a *law* shall have been more particularly unfolded.⁶

At another point Bentham clearly speaks of international law as comity, and at a third place he establishes without doubt the fact that he feels that the meaning of the word law is stretched and distorted when used in the term international law. Evidences of these facts may be seen in the following excerpts:

These rights and duties between sovereigns, are properly only the rights and duties of morality. For it can scarcely be hoped that all the nations of the world will enter into universal treaties, and establish tribunals of national justice.⁷

International law is in the same condition [that is, like political law, which, according to Bentham, is defective and not complete]. A treaty between two nations is an obligation which cannot possess the same force as a contract between two individuals. The customs which constitute what is called the *law of nations*, can only be called laws by extending the meaning of the term, and by metaphor. These are laws, the organization of which is still more defective and incomplete than that of political law. The happiness of the human race would be fixed, if it were possible to raise these two classes of laws to the rank of complete and organized laws.⁸

It should be noted that Bentham's remarks concerning the desirability of perfecting international law are of some importance in view of the approach which, as was seen at the beginning of this note, was taken by James Mill, and which represents an element in the feeling of the Benthamite school on this subject.

It is clear that Jeremy Bentham, though wanting to advance the cause of a world law, was not prepared to state and rationally maintain that international law was properly law, and it is obvious that John Austin reflects more clearly the technical position taken by Bentham regarding this matter. On the other hand, it seems reasonable to assume that this technical stand is not one which is amenable to the spirit expressed in some of the works of Bentham which have been observed here, nor does it seem to agree in many respects with the "greatest happiness" idea which is so much a part of the Benthamite tradition. It is entirely possible and logical then to draw one more conclusion, namely, that James Mill's work on international law may well be regarded as a more rational expression of the spirit of utilitarian thought than the positivism of Austin in so far as the relationship between international law and the "greatest happiness" principle is concerned.

H. B. JACOBINI *

⁶ *Works*, Vol. I, pp. 149-150. Italics in original.

⁷ *Works*, Vol. III, p. 200.

⁸ *Works*, p. 162.

* *The Citadel, Military College of South Carolina, Charleston, S. C.*

RECENT AMERICAN POLICY CONCERNING THE CAPITULATIONS
IN THE STATES OF THE MIDDLE EAST

The impending termination of the British Mandate in Palestine again draws attention to the status of the capitulations in some of the territories which formerly appertained to the Ottoman Empire.¹ The problem must now be approached in an atmosphere which is quite different from that which prevailed a quarter of a century ago. The states of the Middle East today are striving to take their proper place in a world community organized on the basis of the sovereign equality of all its members. It is natural that they find it difficult to reconcile with these aspirations the continued existence of the capitulatory system. They have seen also during the past twenty-five years the abolition of extra-territoriality in Turkey itself, in Egypt, and in Iran,² and have viewed with increasing disfavor the surviving restrictions on their judicial independence. Such developments have had inevitable repercussions on the policy of the capitulatory Powers.

The changed conditions have been clearly reflected in the attitude of the Government of the United States. When in 1914 the Ottoman Government purported to denounce the capitulations unilaterally, a vigorous protest was made by the United States; and in the disposition of Ottoman territories after the War of 1914, the United States was insistent that the privileges of the capitulations should be recognized and maintained. Today, however, a different attitude is being taken and the recognition is now general that the capitulations are, in practice if not in theory, a thing of the past.

The present situation regarding the capitulations will be examined here with reference to the various states which have come to exist within what were once the nominal confines of the Ottoman Empire.^{2a}

¹ On the Ottoman capitulations in general, see Thayer, "The Capitulations of the Ottoman Empire," this JOURNAL, Vol. 17 (1923), p. 207; Sousa, *The Capitulatory Regime of Turkey*, 1933. American capitulatory rights derived primarily from the treaty with Turkey of May 7, 1830: Miller, *Treaties and Other International Acts of the United States*, Vol. III, p. 541.

² The abolition of the capitulations in Turkey was recognized by the signatory States in the treaty of Lausanne of July 24, 1923. League of Nations, *Treaty Series*, Vol. 28, p. 11. Similar consent to abolition was accorded in various agreements by other States. The American-Turkish treaty of October 28, 1931, although it contained no specific reference to capitulations, was regarded by the parties as effecting abolition. United States, *Treaty Series*, No. 859; Hackworth, *Digest of International Law*, Vol. II, p. 529. In Egypt capitulatory rights were terminated, subject to a twelve-year transitional regime, by the Montreux Convention of May 8, 1937. United States, *Treaty Series*, No. 939. In Iran, all remaining extra-territorial jurisdiction was ended in 1928 by negotiations between Iran and the governments concerned. Hackworth, Vol. II, p. 532.

^{2a} Ottoman control did not extend to all parts of Arabia, and in some of the territories where it existed it was tenuous and uncertain. No mention is made here of the situation in Bahrein, in Kuwait, on the Trucial Coast, or in the Aden Protectorate, all of which have long been in special relations with Great Britain.

Palestine.—By Article 8 of the Mandate for Palestine, approved by the Council of the League of Nations on July 24, 1922, it was provided:

The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by Capitulation or usage in the Ottoman Empire, shall not be applicable in Palestine.

Unless the Powers whose nationals enjoyed the aforementioned privileges and immunities on August 1st, 1914, shall have previously renounced the right to their re-establishment, or shall have agreed to their non-application for a specified period, these privileges and immunities shall, at the expiration of the mandate, be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned.³

The second paragraph of this article, with its explicit provisions for revival, was included upon the emphatic insistence of the United States.⁴ Further, pending the conclusion of the treaty of December 3, 1924,⁵ by which it consented to British administration of Palestine in accordance with the terms of the Mandate, the United States declined to waive its capitulatory rights in Palestine, and consular courts continued to function.⁶

With the announcement in 1947 of Great Britain's intention to relinquish the Mandate, the provisions of Article 8 assumed renewed importance, and to dispose of them in orderly fashion became one of the problems facing the General Assembly of the United Nations. In the plan of partition for Palestine recommended by the General Assembly on November 29, 1947, Part IV declared:

States whose nationals have in the past enjoyed in Palestine the privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by capitulation or usage in the Ottoman Empire, are invited to renounce any right pertaining to them to the re-establishment of such privileges and immunities in the proposed Arab and Jewish States and the City of Jerusalem.⁷

It would appear that the formula here followed was derived from the precedent established upon the termination of the British Mandate for Iraq in 1932. The fate of this invitation will no doubt depend upon the fate of the partition plan as a whole. It may be said that, in the absence of renunciation, the General Assembly has impliedly recognized the right of the capitulatory States to claim once again extra-territorial jurisdiction in Palestine. And in the event of prolonged unrest in that troubled country, this right may not pass unasserted.

³ Hudson, *International Legislation*, Vol. I, p. 109.

⁴ United States, *Foreign Relations*, 1921, Vol. II, pp. 106-107; 1922, Vol. II, pp. 268-302.

⁵ United States, *Treaty Series*, No. 728.

⁶ Hackworth, *Digest*, Vol. II, pp. 517-523.

⁷ United Nations Document A/516, November 25, 1947, p. 23.

Transjordan.—As part of the territory placed under British Mandate in 1922, Transjordan was originally as fully subject to the provisions of Article 8 as Palestine itself, and this was the view held by the British Government.⁸ Its development was increasingly separate, however, and by treaty of March 22, 1946, it was recognized by Britain as a fully independent state.⁹ On April 18, 1946, the final Assembly of the League of Nations took note of this termination of the Mandate and of Transjordan's status as a new member of the world community.¹⁰ Neither the British treaty nor the League resolution contained any reference to capitulatory rights. Even if these revived by operation of Article 8—as in strict law would appear to be the case—no state has yet advanced to claim them. The United States up to the present time has not recognized Transjordan, but in the opinion of the Department of State the changes in its status did not deprive the United States of any rights or interests it might have there.¹¹

Syria and Lebanon.—Particularly interesting by way of comparison with the Palestine situation have been the developments in Syria and Lebanon. Article 5 of the French Mandate for those states, approved by the Council of the League of Nations on July 24, 1922, was substantially identical with Article 8 of the Palestine Mandate, and contained (again at American insistence) the same provisions with respect to the revival of capitulatory rights.¹² By a treaty of April 4, 1924, the United States consented to French administration of Syria and Lebanon in accordance with the terms of the Mandate.¹³

The termination of the Mandate and the independence of Syria and Lebanon were recognized by the Assembly of the League of Nations in 1946, after recognition had been accorded them by the United Kingdom, the United States, the Soviet Union, and other states.¹⁴ The contingency contemplated in Article 5 having thus occurred, it would seem that in legal theory capitulatory jurisdiction was thereupon re-established in the two states. This was the view taken by the Government of the United Kingdom in notes addressed to the Syrian and Lebanese Governments in 1946 and 1947, but both of those Governments declined to accept this contention; a practical arrangement was concluded by which the full competence of local courts over British subjects was recognized by the

⁸ British Report to the League of Nations on the Administration of Palestine and Transjordan for 1929, Colonial No. 47 (1930), p. 153.

⁹ Great Britain, *Treaty Series*, No. 32 (1946).

¹⁰ League of Nations, *Official Journal*, Special Supplement No. 194, p. 278.

¹¹ Letter of Secretary of State Byrnes to Senator Myers, April 23, 1946. *Department of State Bulletin*, Vol. 14 (1946), p. 765.

¹² Hudson, *International Legislation*, Vol. I, p. 99. For diplomatic correspondence relative to Article 5, see United States, *Foreign Relations*, 1921, Vol. I, pp. 922-924; 1922, Vol. II, pp. 117-134.

¹³ United States, *Treaty Series*, No. 695.

¹⁴ League of Nations, *Official Journal*, Special Supplement No. 194, p. 278.

United Kingdom, and the Syrian and Lebanese Governments undertook that judges in such cases should be those with experience in the mixed courts of the mandatory regime.¹⁵ The net effect, of course, was to terminate British capitulatory rights in the two States.

The United States has taken no action comparable to that of Great Britain. But it may be observed that in the exchanges of notes of September 7-8, 1944, by which the United States recognized the independence of Syria and Lebanon, each of those Governments agreed that existing American rights should continue unimpaired, particularly those set forth in the Franco-American treaty of 1924.¹⁶ This might possibly be construed as a recognition of the provisions of Article 5 of the Mandate, recited in that treaty, but no such claim has been advanced by the United States.

Iraq.—The suspension of capitulatory rights in Iraq during the continuance of the British Mandate was approved by the Council of the League of Nations on September 27, 1924.¹⁷ By the tripartite Anglo-American-Iraqi treaty of January 9, 1930, the United States consented to this suspension during the period of the "special relations" between Britain and Iraq, and further agreed that at the end of the period the rights of its nationals should be the subject of negotiation between itself and Iraq.¹⁸ In 1932, as part of the arrangements for the termination of the Mandate and the admission of Iraq to the League of Nations, the Government of Iraq undertook to maintain for ten years the existing judicial system, which provided certain safeguards for foreigners and which had been assented to by the Council of the League and by all the interested States, including the United States.¹⁹ In approving this declaration, the Council recommended to the states concerned the renunciation of their capitulatory rights in Iraq, and on September 21, 1932, it was informed that such renunciations had been made by all interested Members of the League.²⁰

The United States was not a party to this action,²¹ but the view was expressed by the Department of State on June 17, 1932, that the declaration of the Government of Iraq adequately protected American interests.²² Since the termination of the "special relations" referred to in the treaty

¹⁵ Exchange of Notes with the Government of Syria, November 1-2, 1946, Great Britain, *Treaty Series*, No. 37 (1947); with the Lebanese Government, January 22, 1947, same, No. 45 (1947).

¹⁶ Exchange of Notes with Syria, United States, *Executive Agreement Series*, No. 434; with Lebanon, No. 435.

¹⁷ League of Nations, *Official Journal*, 1924, pp. 1846-1847.

¹⁸ United States, *Treaty Series*, No. 835.

¹⁹ Hackworth, *Digest*, Vol. II, pp. 524-527.

²⁰ League of Nations, *Official Journal*, 1932, pp. 1213-1216, 1850.

²¹ The Mandatory Power took the view that American rights were regulated by the treaty of 1930.

²² Hackworth, as cited, p. 526.

of 1930, the United States has asserted no claim to capitulatory rights in Iraq, nor apparently has it engaged in negotiation on the subject. Of the two principal agreements concluded with Iraq since 1932—the extradition treaty of June 7, 1934, and the treaty of commerce and navigation of December 3, 1938—neither makes any reference to the question.²³

Saudi Arabia.—The extent to which the Ottoman capitulations were applicable to the various regions now included in the Kingdom of Saudi Arabia is a disputable point, but as a matter of fact the United States has never laid claim to capitulatory rights there. The situation is now governed by the Saudi Arabian-American agreement of November 7, 1933, which provides that the nationals of either party in the territory of the other “shall be received and treated in accordance with the requirements and practices of generally recognized international law.”²⁴ Although it is further stipulated that they shall be treated not less favorably than any other foreign nationals, this would not confer a grant of extra-territorial jurisdiction in the absence of such rights held by another State, and such a claim by any State would appear today to be a remote possibility.²⁵

Yemen.—In Yemen, as in Saudi Arabia, the United States never claimed extra-territorial jurisdiction, and such a claim based on the Ottoman capitulations might have been open to dispute. In the agreement of May 4, 1946, between the United States and Yemen, provisions identical with those of the Saudi Arabian agreement are to be found.²⁶ These would preclude any special jurisdictional rights, unless such rights were granted to a third state and the most favored nation clause was brought into operation. It does not appear that any such privileges are now exercised in Yemen by any state.²⁷

Muscat.—The Sultanate of Muscat and Oman is apparently the only Middle Eastern state in which the United States still holds unquestioned rights to extraterritorial jurisdiction, although they have not been exercised in recent years.²⁸ Such rights derive, however, not from the Otto-

²³ United States, *Treaty Series*, Nos. 907, 960.

²⁴ United States, *Executive Agreement Series*, No. 53.

²⁵ Saudi Arabia and Great Britain (which formerly exercised extra-territorial jurisdiction in parts of Saudi Arabia) agreed in the treaty of Jeddah of May 20, 1927, that “the principles of international law in force between independent Governments” should be respected by each party with regard to the nationals of the other. Great Britain, *Treaty Series*, No. 25 (1927).

²⁶ *Department of State Bulletin*, Vol. 15 (1946), p. 94.

²⁷ Great Britain obtained extra-territorial privileges in Yemen by a treaty of January 15, 1821. Aitchison, *Treaties, Engagements, and Sanads Relating to India and Neighbouring Countries*, 5th ed., Vol. XI, pp. 37, 171. But in its treaty with Yemen of February 11, 1934, it agreed that its nationals should be governed by local laws, subject to most favored nation treatment: Great Britain, *Treaty Series*, No. 84 (1934).

²⁸ An American Consulate was established at Muscat in 1880, but was closed in 1915. Aitchison, as cited, p. 272.

man capitulations, for Turkish control never penetrated to Muscat, but from a treaty with the Sultan of September 21, 1833.²⁹ The jurisdiction conferred by the treaty appears to be limited to disputes between American citizens; the Arabic version of the text states that in disputes between Americans and Arabs, judgment shall be given by the Arabs.³⁰ Full consular jurisdiction is exercised in Muscat by Britain,³¹ but the American treaty contains no applicable most favored nation clause.

From the foregoing recital it is clear that the United States has moved far from that insistence on capitulatory rights which characterized its attitude after the first World War. American policy has of necessity responded to the trend throughout the Middle East toward independence and equality. That this accommodation has in general occurred through tacit acquiescence rather than by express consent makes the change less obvious, but no less definite. Today in some states the capitulations are dead beyond all cavil, in others they may still survive in a kind of legal limbo; but in either case they are probably beyond recall to life and vigor. It appears at the present unlikely that any attempt will be made by the United States in the future to exercise capitulatory rights in the Middle East.

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LAWYERS OF THE AMERICAS RECOMMEND IMPORTANT IMPROVEMENTS IN LAWS

Five hundred and seventy-six lawyers assembled at Lima, Peru, on November 25, 1947, for the Fifth Conference of the Inter-American Bar Association. These lawyers, representing nearly every country of the American hemisphere, considered papers previously prepared by committee members on a large number of topics assigned to the seventeen committees through which the organization functions. Many of the delegates had attended the previous conferences of this Association, the first of which was held at Havana, in March, 1941, the second in Rio de Janeiro in August, 1943, the third in Mexico City in August, 1944, and the fourth in Santiago, Chile, October, 1945.¹ The sustained interest and active participation in the work of this organization indicates the firm hold which it has obtained on the interest of the lawyers of this hemisphere since the Association was organized in Washington eight years ago on May 16, 1940.

The opening session of the Conference was held in the Municipal Theater at Lima and was attended by the President of Peru, members of the cabinet and diplomatic corps, and leading figures in resident society, as

²⁹ Miller, *Treaties and Other International Acts of the United States*, Vol. III, p. 789;

³⁰ Hackworth, *Digest of International Law*, p. 530.

³¹ Modern translation of the original Arabic in Miller, *Treaties, etc.*, Vol. III, p. 801.

³² Treaty of February 5, 1939. Great Britain, *Treaty Series*, No. 29 (1939).

¹ This JOURNAL, Vol. 39 (1945), p. 553; Vol. 40 (1946), p. 820; Vol. 41 (1947), p. 138.

well as the delegates and members of their families. In response to the roll call by the Secretary General delegates from nearly all the eighty member associations responded, indicating the wide-spread interest in its work. President Hernando de Lavalle delivered an enthusiastic and scholarly address of welcome in which he set forth the scope and significance of the meeting. Response was made on behalf of the Latin American delegates by Lic. Carlos Sanchez Mejorada, the fourth President of the Association; Mr. Carl B. Rix of Milwaukee, past-president of the American Bar Association then responded for the English-speaking delegates.

Lic. Carlos Sanchez Mejorada, who is personally well known and loved by many eminent lawyers throughout the Americas, included the following remarks in his outstanding address:

... The peoples of America have had ... a tendency toward living together in peace and toward continental organization. Thus, starting from the Panama Convention of 1826, inter-American meetings of one sort or another have taken place. ... Lawyers were not strangers to this impulse of solidarity. Since many years ago and in many places, they wanted to create some unofficial institution that, in a permanent form, would promote their personal acquaintance and their work in common; and from those converging aspirations there was born ... our Association, which groups together the bar associations of all America and gives them an organ of common expression and action.

The most praiseworthy feature of our Association has been its continued effort—clearly shown in Committee XVII (Post-war Juridical Problems)—to affirm the concept of democracy—so greatly distorted in certain nations of the Old World—in the way in which we occidentals understand it, that is, as a system in which the social and political institutions are nothing but a medium where individuals may freely develop their personality and fulfill their destiny, and are based on the enjoyment, without restrictions, of certain rights—civil, economic and cultural—inherent in the human being that do not have their origin in positive legislative enactments because they are prior and superior to them.

Mr. Rix stressed the great interest of lawyers in the United States in the success of the meeting, and called particular attention to legal education in the following words:

Last year, at Santiago, a message could not be delivered by me personally on the subject of legal education in citizenship. That was done by the colleague of all of us, Mr. George Maurice Morris.² In that message the formation of the Inter-American Academy of Comparative and International Law and its importance in the educational work of the Inter-American Bar Association were described. The great problem which the Academy must solve is to broaden the base of its work, so that more people will receive the benefits of its edu-

² For the full text of the address by Mr. Rix see the April, 1946, issue of the *Journal of the American Judicature Society*.

cational policies. Comparative law may be studied by a minority, international law in modern society must be the property and deep concern of the many. Only in that way may full support be given to the instruments for peace which have been constructed and put in operation and be given the complete support of the affected people, coördinating their efforts for peace with advised and informed public opinion. The greatest guarantee for peace is a united mind for peace, a mind for detection and exposure of any plans for war, a determination for the early extinction or obliteration from public life of those who plan for war in any way, shape, or manner. You will join in saying that the purpose of the people of the Western Hemisphere is for peace, and that, united as we are in that common purpose, we can demonstrate to the world our belief and conviction that the example of the nations of the Western Hemisphere can and should be followed by nations in other areas of the world. Language is not a barrier, differing social conditions are not a barrier, differing economic conditions are not a deterrent.

Common constitutional principles, common social laws and common economic interests, have drawn the lawyers of the Western Hemisphere to close understanding and coöperation in the years just past. The effectiveness of the Inter-American Bar Association is indicative of that close and enduring relationship. But effective as it has been in the past, the present offers still greater opportunities and obligations.

The address of His Excellency, Dr. José Luis Bustamante y Rivero, President of Peru, climaxed the evening. In it President Bustamante pointed out the great role played by men of the legal profession and the law in the history of Peru, and presented to the assembled delegates the challenge of present problems. With reference to the solution thereof the following paragraphs may be quoted:

History's recent events, which can scarcely be called historical as the fact that our own generation has lived through them gives them a current actuality, suggest the imperative of a great human unity, made of understanding and harmony, if we wish to save the future of the species from a hecatomb. . . .

There is no one better than the lawyer to act as the crusader of this undertaking. Member of a profession, liberal above all, he is able to stamp his opinion and advice with the sincere imprint of his free-will, conditioned only by law's soberness. The flights of his thought are not restrained by the limitation tying the ruler, nor is his attitude influenced by political passion, nor are his actions tainted by the selfishness of the merchant. His is a spirit of the loftiest plentitude which looks down on the panorama of things from the open heights, with the calm lucidity of heavenly bodies and the firm support of soaring wings . . . for that reason . . . we place all our expectations and our hopes in this conference, whose agenda includes the hardest and most severe problems of the world's organization and peace.

You are spokesmen of a New World, in whose young and strong mentality (there is) the longing for . . . fruitful truth, without sectarianism or fears, to be heard as a tocsin in human debates. We have been surrounded by inexcusable mental constraint. On one side

fanaticism has tried to encase within the narrow boundaries of sectarianism mind's free flight; brute strength, on the other hand, has displayed its intolerant omnipotence to prevent free and impartial analysis of facts, and, shackled by these double irons, mind has wavered between prejudice and faith, between proselytism and threats, powerless to judge, with the autonomous dominance of its sublime capacities, the world's reality. But the voice of liberation will come from America. Personality does not lose its force at round-table conferences; it attains gigantic strength when converted into collective coöperation. The universe demands that coöperation from you, gentlemen, to face the task of envisaging a new era; remote from the antagonisms and routine of the past.

Of the seventeen committees that functioned in the Conference, the action taken by Committee I on Immigration, Nationality, and Naturalization will be of particular interest to the readers of the JOURNAL and consequently the following resolutions are quoted:

THEME I:

In view of the difficulty of developing immediately by means of treaties or otherwise, an extra-national law which would govern uniformly the civil capacity and status of persons (it is resolved), that in the meantime, the conflicts which may arise in this field be solved in a uniform manner by application of the principle of domicile.

THEME II:

1. (It is resolved) that, in the exercise of the rights of a citizen inherent in naturalization, it would be convenient to consider two successive steps. In the first the legal effects should be limited to the exercise of suffrage, and in the second should comprise the right to be elected to office, with the exceptions and limitations set forth in the Constitutions and laws of the respective countries.

2. That the length of required residence, in order to obtain naturalization, should be shorter when it refers to persons born in the Americas.

3. That the length of required residence be shorter also in cases involving marriage with nationals of the country where nationality is to be adopted, and in the case of married persons whose children are born in the country.

4. That the American countries organize an Immigration Committee in the Pan American Union to study and suggest measures for the promotion of immigration in America, relative to its economic, technical, racial, and legal aspects, and for the security of the Continent.

THEME V:

1. That all matters related to nationality concern public order and consequently, the claim to several nationalities, or plural-nationality, is to be considered incompatible with international law.

2. There exist only nationals and aliens within the territory of each Nation and it is recommended that all legislatures of American coun-

tries adopt uniform provisions concerning the nationality of origin, naturalization, or acquired nationality, and restitution of original nationality.

3. In the absence of such uniformity it would be convenient to adopt the following measures:

a. If the conflict on nationality is litigated before the authorities of a country interested in granting its nationality, the law of that country shall determine the case.

b. When the conflict is litigated in a country not interested in granting its nationality to the person concerned, and said state declares that the matter is not of concern to it, then there shall be applied the law of nationality of the country of origin, in the absence of any express declaration by such person made upon attaining majority, which must have been made prior to the raising of the conflict.

c. When it is not possible to determine true nationality the judge must apply the law of his own country concerning the determination of nationality.

THEME V:

That uniform legislation, based on the system of complete independence of the nationality of husband and wife, should recognize that neither marriage nor its dissolution has a modifying effect with respect to their nationalities.

Resolutions adopted by Committee XVII on Post-war Juridical Problems are also highly significant and the following resolutions which were adopted on the recommendation of this committee are quoted:

THEME I:

1. To express its approval of a fundamental charter which shall contain the essential principles that should govern the international activities of the Nations of the New World and their conduct in reciprocal relations.

2. To declare that the charter should adopt as basic that principle contained in the Declaration of Lima and reiterated in the Act of Chapultepec which states that the essence of international order involves respect of the personality of the Nations as well as the principle contained in the United Nations Charter which has among its purposes that of fomenting among the nations friendly relations based on the respect for the principle of equality and that of free determination of destinies by all countries. This Conference declares that in the Americas said concept should function subordinate only to the principle of absolute freedom.

3. To declare that it is advisable that the charter, in defining American solidarity, should state that mutual aid and common defense of American countries are linked to their permanent coöperation in a policy inspired by the principles and objectives of peace.

4. To express its hearty approval of the studies which have been carried out on this matter, and particularly of the initiative of Dr.

Alejandro Alvarez presented to the Fourth Conference of the Inter-American Bar Association held in 1945 in Santiago, Chile.³

THEME II:

That it adopts the Declaration on the Rights and Duties of the American States formulated by the Pan American Union in accordance with Resolution IX of the International Conference on Problems of War and Peace held in Mexico in 1945, with the additions and substitutions introduced by Committee XVII.

The text of the Declaration with the additions and modifications agreed upon follows:

Article 1: All states are juridically equal. They have the same rights and obligations. Said equality emanates from the existence of the state as a subject of international law, and not from the power they may have to enforce or uphold it, nor from the territorial extension or degree of progress of each state.

Article 2: The rights inherent in the personality of each state must be respected by all other states and protected by the inter-state community in accordance with the norms of international law.

Article 3: The American states reiterate their adherence to the democratic principles deemed essential to peace and inter-American solidarity.

Article 4: The preservation of peace, based on justice and law, is a fundamental norm in the conduct of relations between the American states. Each state has the right to have its own existence develop in a secure and peaceful manner.

Article 5: Good faith, as an elemental requirement of right and equity, must govern the relations between states and regulate the interpretation of their duties and the endorsement of their obligations.

Article 6: Treaties must have the status of public pacts and be faithfully observed.

Article 7: The existence of a new state is independent of its recognition by other states. Recognition, which is unconditional and irrevocable, signifies that the state granting it accepts the personality of the new state with all the rights and duties determined by international law for both.

Article 8: The direct or indirect intervention of one or more states in the domestic or foreign affairs of another state is inadmissible, regardless of the motive. The previously mentioned principle excludes not only the use of armed force, but also any other method of interference or attempt against the personality of the state, the political, economic and spiritual elements of which it is constituted.

Article 9: The territory of a state is inviolable. It cannot be the object of military occupation or of any other measure of force taken by another state, directly or indirectly, whatever the motive, even in a temporary manner. Territorial acquisitions or special advantages obtained by force, or by any other means of coercion, shall not be recognized.

³ *Federacion Inter-Americana de Abogados, Cuarta Conferencia, Santiago, 20-29 de Octubre de 1946*. Vol. II, pp. 1518-1534. "Estudio de Dr. don Alejandro Alvarez;" *Themes and Resolutions of the Fourth Conference of the Inter-American Bar Association*, Resolution LXXX (Committee 17, Theme 5), pp. 49-50.

Article 10: The American states, in their international relations, shall refrain from threatening to use or using force against the territorial integrity or political independence of any state, or taking other action incompatible with the objectives of the United Nations.

Article 11: The measures taken by the Inter-American system, or the United Nations, for the maintenance of peace and security according to international agreements, and those adopted by any other states in the exercise of the rights inherent in self-defense in case of aggression contemplated in the treaties in force, do not constitute violation of the principles enunciated in Articles 8, 9, or 10.

Article 12: All differences of an international character must be solved by peaceful means recognized by international law. Any unilateral resolution of such differences is incompatible with international legal order.

Article 13: The jurisdiction of a state applies to all inhabitants within the limits of the national territory. Nationals, as well as aliens, are under the same protection of and owe obedience to the laws and national authorities.

Article 14: The aim of the state is the integral development of man and the defence of the integrity and value of mankind within society. The interests of the community must be harmonized with that of the individual. The American man does not believe in living without justice and freedom.

Article 15: It is the duty and the obligation of each state to respect and promote the rights and liberties consecrated in the Declaration of Rights and Duties of Man, without distinction as to race, sex, language or religion.

Article 16: In order to insure the development of democracy for the purpose of accomplishing economic, social and cultural progress, each state must guard public health, endeavoring to raise the standards of living, to fight unemployment, and to foster public education.

Article 17: Economic coöperation is essential to the mutual prosperity of the American people. Misery in any of them, such as poverty, malnutrition, or low standards of health, affects each of them, and therefore affects all states as a whole.

Article 18: The American states proclaim the principle of equality of access with respect to trade and world materials, to elements of production necessary for industrialization and economic development. For the realization of these purposes, the American states admit that they have the obligation to coöperate in order to avoid and eliminate unfair differences; to reduce barriers harmful to international trade; to avoid obstructive practices to trade; and to eliminate possible excesses resulting from economic nationalism.

Article 19: The American states, fully conscious of the usefulness of friendly interchange of opinions, particularly by means of consultation, shall submit to the consideration of the American states any initiative or situation in the examination or solution of which said states may have a common interest.

Article 20: The American states reiterate their adherence to the "Good Neighbor" policy which proclaims a common ideal to all American nations, and believe that their mutual relations must be governed by said rule.

Article 21: The American states, fully conscious of the geographic and historic factors that have originated the Pan American movement, reaffirm their faith in the principle of continental solidarity and proclaim their irrevocable loyalty to the Inter-American system, and consequently shall comply in all good faith with their obligations as members of this system.

Article 22: The American states, when reiterating the purpose to strengthen continental solidarity, also proclaim their determination to behave as members of a world community and consequently shall comply in all good faith with their obligations as members of a world organization.

THEME III:

Whereas the security and protection of the international rights of man, in accordance with the spirit of the United Nations Charter and with the principles enunciated in Article 8 of the Draft Declaration of the Rights and Duties of American States, formulated by this committee, should be undertaken without distinctions or discriminations of any kind, it is therefore recommended that the Ninth American International Conference, intended to meet in Bogota, while studying the means of making effective the international rights of man, should abolish the difference between nationals and aliens, insofar as protection of their rights is concerned.

THEME III:

1. That the future Declaration of the Rights and Duties of Man, in addition to the documents already considered in the Draft by the Inter-American Juridical Committee of Rio de Janeiro, shall also take into consideration all official and private background material.

2. That special consideration be given in the development of such a Declaration to the Draft prepared by the American Law Institute.

THEME IV:

To offer the coöperation of the Inter-American Bar Association to act as a consultative body on the codification of public international law when requested and also to give information, background facts, or data tending towards the realization of this work.

THEME IV:

To approve the establishment of the International Law Commission in the United Nations, and

To recommend that this Commission be continued as a permanent body and not merely for the three-year period proposed by the United Nations.

To urge that governments as well as national and international organizations, official or unofficial, coöperate with the International Law Commission in the attainment of its objectives.

THEME IV:

1. To recommend the creation of a special committee to be in charge of the codification of public international law.
2. That permanent institutes for the codification of public international law be created in each country.

THEME V:

That the Association take the necessary steps to attain, through the Executive Committee, the status of a consultative body of the United Nations for legal problems considered within the scope of the association's activities. Until such status is obtained the Association should declare its good will and readiness to cooperate with this world organization by replying to all questions and presenting any reports or opinions requested of it.

THEME VI:

That it would be appropriate for the Inter-American Bar Association and its affiliated organizations to compile the expressions of world or public opinion on points which should be modified or reformed in the United Nations Organization, making special studies for this purpose on the defects or disadvantages which experience has already revealed in the functioning of the San Francisco Charter.

THEME VII:

To address the United Nations, recommending, as an indispensable guaranty of peace, the prompt conclusion of the treaty on Control of Production and Use of Atomic Energy, wherein there should be contemplated the creation of an organization in which all states of the World Community may take part, either by participating actively in said organization according to the structure established or otherwise enjoying the entire supply of information which said organization may produce, with absolute respect for the juridical equality of states.

THEME VIII:

1. That international peace and security based on the enforcement of international law require that the latter be crystallized into precise rules which may define international crimes and specify the corresponding penalties for offenders.
2. That there is need for an agreement between the states concerning the creation of Permanent International Courts to enforce the above-mentioned rules and penalties.

An excellent social program was arranged for the entertainment of the delegates and this contributed greatly to the friendships which were developed among the delegates and which will be of lasting benefit. Particular appreciation is due the President of the Republic of Peru, Dr. José Luis Bustamante, for his active and democratic participation in these

functions which helped to make this Conference the most outstanding one the Association has held.

The Sixth Conference will be held in Detroit with the Michigan State Bar Association serving as host organization. According to present plans the meeting will be held from May 22 to June 1, 1949. The University of Michigan will take an active part in the Conference.

WILLIAM ROY VALLANCE,

Secretary General, Inter-American Bar Association

INSTITUTE FOR LAW SCHOOL TEACHERS OF INTERNATIONAL LAW AND
COMPARATIVE LAW

During the last three years a greatly increased interest in international law has been shown in the law schools of this country. Enrollment in law school courses in the subject has mounted, the course has been made a required one in certain law schools (including the University of Pennsylvania), and numerous law schools are now offering courses in international law for the first time or are contemplating offering such courses when teachers are available on their staffs. There are signs of a similar interest in comparative law. As a result of these developments, the Committee on International and Foreign Law of the Association of American Law Schools will conduct an institute in New York this summer for law school teachers of international law and comparative law.

The institute will open on Monday, August 23, 1948, at the Association of the Bar of the City of New York on West 44th Street, and will continue for two weeks. The first week or ten days will be devoted chiefly to international law, and the latter part of the time to comparative law. The institute has been made possible by a grant from the Carnegie Corporation. Earl G. Harrison, Vice-president of the University of Pennsylvania and Dean of its Law School, is chairman of the subcommittee in charge of the institute.

Present plans for the international law side of the institute call for a "resident faculty" including Prof. Philip C. Jessup of Columbia University, Dean E. D. Dickinson of the University of California, and Judge Green H. Hackworth of the International Court of Justice. It is expected that a number of other distinguished figures in the international law field will take part for a day each, as visiting lecturers. Perhaps the most valuable feature of the institute will be the interchange of experiences and ideas between the present and prospective teachers of international law courses in law schools who may be in attendance. Probable topics for discussion will include the objectives of international law courses in law schools, teaching materials for such courses, bibliography, teaching methods successfully employed, recent developments in international law, the use of material on international organization in international law courses, and the integration with the strictly legal materials of material on the po-

litical, economic, and social background of international relations. A generally similar program will be conducted in the comparative law field.

Further information regarding this institute and the procedure for enrolling therein may be obtained from the Chairman of the Committee on International and Foreign Law, Prof. Philip Thayer, School for Advanced International Studies, 1906 Florida Ave., N.W., Washington, D. C.

WM. W. BISHOP, JR.

Of the Board of Editors

INTERNATIONAL LAW SECTION IN BELGRADE

Information has been received from Dr. Milam Bartoš, a member of the American Society of International Law, and an official in the Ministry of Foreign Affairs of Yugoslavia in Belgrade, of the establishment in that city of an *Institute for International Politics and Economics*. The Institute will deal with all questions of international law, and a special section for international law has already been created. The objects of the Institute include both scientific studies of international relations and the publication thereof for promotion of international understanding. Steps have been taken for coöperation with the new Institute through this Society's Committee on Coöperation with Other Societies.

P. B. P.

AMERICAN COUNCIL OF LEARNED SOCIETIES

The Society was represented at the Thirty-first meeting of the American Council of Learned Societies, and the Conference of Secretaries held in connection therewith, by the Managing Editor of the JOURNAL, in view of the inability of the Delegates of the Society and the Acting Secretary to attend in person. The meeting was held on January 28-30, 1948, in Rye, N. Y.

The Conference of Secretaries met on January 28-29 and engaged in an extensive and lively discussion of the problems faced by the Constituent Societies at the present time. These included the criteria for membership in the Societies (some Societies impose rather severe restrictions on admission), the need for increasing membership fees (most Societies have increased their dues), and difficulties and delays in publication of technical journals with small circulation. The question of standards for admission to the Council also arose in connection with the action taken the previous year, and was referred to the Council. A general revival and increase of interest in the work of the Societies was reported, comparable with that experienced by this Society. In the course of the meeting it appeared that in most of the Societies an annual report is prepared by the Secretary and submitted to the President and members and then circulated to the other Societies; in lieu of such report in this Society copies of the consolidated table of contents of the 1947 JOURNAL and copies of the program of the

annual meeting are being sent to the office of the ACLS for distribution. A question was raised concerning an increase of the contribution by the Societies to the ACLS or payment by the Societies of the traveling expenses of Secretaries attending the Conference; no action was taken but steps in this direction were generally believed to be desirable.

There were two major problems before the Council itself, one the general position of the Council, the results of the reorganization adopted in 1947, the question of regional organizations under ACLS, and the future of the whole system. A proposal of the Administrative Secretary for division of the Council into panels for more intensive and continuous attention to its major fields of interest and activity was adopted. Details of the ideas expressed and actions taken will shortly be available in the *Bulletin* of ACLS. The other problem concerned international cultural coöperation and here full reports were made of the 1947 meeting of the International Union of Academies and the more recent UNESCO conference in Mexico. The representative of ACLS on the American National Commission for UNESCO reported and there was also a report on the participation of ACLS through the Conference Board of Associated Research Councils in the implementation of the Fulbright Act for international exchange of students. Before the next meeting of the Council, it is believed, important developments will have taken place in both of these general fields.

P. B. P.

[In view of the important position occupied by the United Nations today in the field of international law and organization, there is being inaugurated in this issue of the JOURNAL a new department dealing with legal questions arising in connection with the organization and operation of the United Nations, in pursuance of a vote of the Executive Council taken on October 4, 1947. Dr. Yuen-li Liang, a member of the Society and well known to all readers of the JOURNAL, has kindly agreed to take charge of this department. He will call on other personalities in the United Nations Secretariat and elsewhere for coöperation as he deems convenient. These notes attempt to present a factual and documentary analysis. Any opinions expressed therein are to be regarded as those of the authors and should not be construed as reflecting the views of the Society or its officers or members.]

GEORGE A. FINCH
Editor-in-Chief]

NOTES ON LEGAL QUESTIONS CONCERNING THE UNITED NATIONS

By YUEN-LI LIANG *

THE ESTABLISHMENT OF THE INTERIM COMMITTEE OF THE GENERAL ASSEMBLY

The proposal for an Interim Committee on Peace and Security was presented to the General Assembly by Secretary of State Marshall for the United States delegation on 17 September 1947 as a plan to "strengthen the machinery for peaceful settlement and place the responsibility for such settlement broadly upon all the Members of the United Nations."¹ This proposal met strong and immediate opposition from the Soviet Union, Ukrainian Soviet Socialist Republic, Poland, Czechoslovakia, Byelorussian Soviet Socialist Republic and Yugoslavia, which considered that such a committee would encroach upon the proper sphere of the Security Council, and be a crippling blow to the principle of Great Power unanimity.

The inclusion of the item on the agenda was, however, supported by a large majority of delegations, and the question was referred to the First or Political Committee.² Draft resolutions were submitted by the United States and the United Kingdom, and amendments by Bolivia, Argentina,

* Director of the Division of Development and Codification of International Law, United Nations Secretariat. Views here expressed are not be regarded as necessarily those of the United Nations Organization or any branch thereof. These notes prepared with the assistance of Mr. F. Blaine Sloan, of the New York and Nebraska bar.

¹ UN Doc. A/PV/82, p. 61, 17 September 1947.

² UN Doc. A/BUR/85, 17 September 1947.

and Canada.³ After preliminary discussion in the First Committee during which a wide range of views were expressed both as to the legality and desirability of the proposal, it was referred to a sub-committee composed of thirteen members.⁴ Seats were left vacant on this sub-committee for the Soviet Union and Czechoslovakia, which had also been proposed as members, but they declined to participate in any of its sixteen meetings.

The sub-committee, using the United States proposal as a working basis, prepared a draft which sought to reconcile the various positions of its members. The report and draft resolution submitted by the Rapporteur, Mr. T. Wold of Norway, was adopted by nine votes with four abstentions.⁵

The resolution prepared by the sub-committee followed the general plan of the United States proposal, but limitations were placed on the duties of the Interim Committee, which were specifically defined. The preamble directed attention to the responsibility of the General Assembly first in relation to matters concerning the maintenance of international peace and security under Articles 11 and 35 of the Charter, second in the promotion of international coöperation in the political field under Article 13, and third in the peaceful adjustment of any situation likely to impair the general welfare or friendly relations among nations under Article 14. The preamble also recognized the primary responsibility of the Security Council for prompt and effective action for the maintenance of international peace and security.

Paragraph 1 of the operative portion of the resolution would establish an Interim Committee to which each Member State might appoint one representative. The sub-committee draft differed from the American proposal by specifically limiting the life of the committee to the period between the closing of the second session and the opening of the third session of the General Assembly. In effect, however, there was little substantial change, since under each draft the Committee was to be instructed to report to the next session on the advisability of establishing the Committee on a permanent basis.

The duties of the Interim Committee were stated in paragraph 2. As a "subsidiary organ of the General Assembly established in accordance with Article 22 of the Charter," the Interim Committee was to be instructed to assist the General Assembly in the performance of its functions. It was to consider and report to the General Assembly on matters referred to it by the parent body. Items thus specifically referred to it

³ UN Docs. A/C.1/196, 26 September 1947; A/C.1/215, 16 October 1947; A/C.1/214, 16 October 1947; A/C.1/216, 17 October 1947; A/C.1/217, 17 October 1947.

⁴ UN Doc. A/C.1/SR.78, p. 16, 18 October 1947. Members of the Sub-Committee were Argentina, Australia, Bolivia, Canada, China, France, India, Lebanon, Mexico, Netherlands, Norway, United Kingdom, and United States.

⁵ UN Doc. A/C.1/240, 4 November 1947.

by General Assembly resolutions were the problem of voting in the Security Council and the consultation with the Korean Commission.⁶

The Interim Committee was also to consider and report on any dispute or situation proposed for inclusion in the General Assembly agenda by virtue of Article 11, paragraph 2, Article 14, or Article 35. This paragraph contained two important changes from the United States draft. It specifically included within the competence of the Committee disputes as well as situations. On the other hand it specifically limited the duties of the Committee by requiring that it must determine by a two-thirds majority that a question proposed by a Member is important and requires preliminary study. If it is a matter referred to it by the Security Council, however, a simple majority is sufficient.

The study of methods for coöperation in the maintenance of international peace and security and for promotion of international coöperation in political fields was also included among the Committee's duties. An important difference from the United States draft was the limitation of this study to methods only. Its design was to suggest ways for giving effect to the General Assembly's responsibility in these matters.

The Committee was further to be instructed to consider whether any matter under its discussion would require the summoning of a special session of the General Assembly. In the United States draft the Committee was not specifically limited to such matters. Limitations were also placed upon the competence of the Interim Committee to conduct investigations and appoint commissions of enquiry. It would have to determine that these investigations would be useful and necessary by a two thirds vote, and investigations elsewhere than at the United Nations headquarters should only be made with the consent of the state in whose territory they are to take place.

Paragraph 3 of the resolution was designed to prevent the encroachment of the Interim Committee on the activities of the Security Council or other Councils, committees, or commissions. The Committee would particularly be enjoined from considering any matter of which the Security Council might be seized.

The sub-committee's report and draft resolution were discussed by the First Committee on the 5th and 6th of November 1947 and was approved without change by a vote of forty-three to six, with six abstentions.⁷ After the vote had been taken, the representatives of the Soviet Union, the Ukraine, Poland, Czechoslovakia, Byelorussia, and Yugoslavia declared that the establishment of an Interim Committee was a violation of the Charter, and because of this illegality their Governments would not par-

⁶ Resolution 117 (II), 21 November 1947; and Resolution 112 (II), 14 November 1947.

⁷ UN Doc. A/C.1/SR.97, p. 2, 6 November 1947. For Report of First Committee, see UN Doc. A/454, 10 November 1947.

ticipate in its work. The representatives of Australia and the Philippines on the other hand stated that the establishment of the Interim Committee was in conformity with both the letter and the spirit of the Charter, and they protested against the decision announced by certain Members not to participate in the work of the Committee. After again being debated in plenary sessions of the General Assembly the resolution was adopted on the 13th of November 1947 by forty-one votes to six, with six abstentions.⁸

Definite issues emerged throughout the course of the discussions. Sponsors of the proposal based the need for an Interim Committee primarily upon "the impotence of the Security Council" resulting from the requirement of unanimity among the Great Powers.⁹ The Soviet Union and the other countries opposing the establishment of an Interim Committee argued that it would not lead to improved relations between Members of the United Nations. The purpose of the resolution, they asserted, was to replace the principle of coöperation between the Great Powers by a system which would be subject to control by one state or group of states which would seek to dictate views and impose their wishes upon others.¹⁰

A large proportion of the discussions was devoted to legal arguments as to the validity of the resolution under the Charter. The principal legal objections argued were, first, that primary responsibility for maintenance of peace and security was assigned by the Charter to the Security Council and not to the General Assembly, and, second, that no organ comparable to the Interim Committee was provided for in the Charter. In support of this latter argument it was contended that the Committee was not a subsidiary organ under Article 22 in view of its broad competence and continuous existence. Article 7, paragraph 1, which names the principal organs did not, it was argued, provide for an inter-session committee of the General Assembly, and it was not contemplated under Article 20 that the General Assembly should be an institution in permanent session. The General Assembly, therefore, was not empowered to establish an organ to perform continuously its functions. It was further argued that the terms of reference of the Interim Committee were in fact broader than the competence of the General Assembly itself under the Charter.¹¹

In defense of the legality of the resolution it was contended that the General Assembly is given concurrent responsibility with the Security Council in matters of international peace and security and that the special sphere of the Security Council is adequately safeguarded by the terms of the resolution. Mr. Evatt, representative of Australia, argued that the

⁸ UN Doc. A/PV/111, pp. 92-95, 13 November 1947.

⁹ Mr. Dulles, United States representative, in UN Doc. A/C.1/SR.78, p. 10, 18 October 1947.

¹⁰ Same, at 5.

¹¹ Mr. Vishinsky, representative of the Soviet Union, in UN Doc. A/C.1/SR.74, pp. 4-19, 14 October 1947.

Interim Committee would not encroach upon the Security Council's competence since it could not consider questions which had been referred to the latter.¹² He further stated that the Interim Committee was in fact a subsidiary organ, ancillary to the General Assembly. Its duties were limited and it could only make reports to the General Assembly to assist it in the carrying out of its functions.¹³

Some doubts had also existed concerning the advisability of including the consideration of disputes, as well as situations, within the duties of the Interim Committee. Dr. V. K. Wellington Koo, representative of China, pointed out that from a practical point of view the Security Council is far better equipped than the General Assembly to deal with disputes.¹⁴ However, since it was agreed that disputes should be included, he suggested that a reference be made to Article 35 as only under that Article can non-Members of the United Nations bring a dispute to the General Assembly.¹⁵

Since serious doubts were expressed as to the constitutional nature of the resolution, Sir Hartley Shawcross, representative for the United Kingdom, suggested that the question might be referred to the International Court of Justice for an advisory opinion. This proposal was in turn opposed by Mr. Vishinsky, the representative of the Soviet Union, on the ground that it was a sovereign right of Member States to declare whether or not they should participate in the work of organs of which they did not approve.¹⁶ The Soviet Union and the five other states who have refused to participate in the work of the Interim Committee on the ground that it is a violation of the Charter are adhering to this announced position.

INTERPRETATION OF THE CHARTER AND GREATER USE OF THE INTERNATIONAL COURT OF JUSTICE

In the period of over two years since the International Court of Justice was established, only one contentious case and one request for an advisory opinion have been presented to the Court. The fact that it has not been more widely employed in settling international controversies has caused some concern. Proposals intended to encourage the greater use of the International Court of Justice by governments, United Nations organs, and specialized agencies were submitted by several delegations to the Second Session of the General Assembly in 1947.

The need for greater use of the Court in connection not only with disputes of a legal character, but also with legal aspects of disputes and situations, was placed on the agenda on the proposal of Australia.¹ This

¹² UN Doc. A/C.1/SR.94, p. 4, 5 November 1947.

¹³ UN Doc. A/PV/110, p. 141, 13 November 1947.

¹⁴ UN Doc. A/C.1/SC.1/W.6, 28 October 1947.

¹⁵ Same, at 2.

¹⁶ UN Doc. A/C.1/SR.97, p. 3, 6 November 1947.

¹ UN Doc. A/346, 21 August 1947.

item was referred to the Sixth Committee² and the Committee had before it a draft resolution submitted also by Australia and a proposal from Iran. The Australian draft resolution recommended that the United Nations organs should regularly review questions of law which arise in the course of their activities, particularly those relating to the interpretation of the Charter and that specialized agencies should do the same with respect to the interpretation of their constitutions, with a view to requesting advisory opinions from the International Court of Justice.³ The draft resolution submitted by Iran recommended to Member States that they accept the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, and that they submit differences of a juridical character to the International Court of Justice. It also recommended to the Security Council that disputes of a legal character and also legal aspects of certain differences and situations should be referred to the Court.⁴

These proposals for the greater use of the International Court were first discussed by the Sixth Committee on 8 and 9 October 1947.⁵ Mr. Evatt of Australia, in commenting on the draft resolution presented by his delegation, explained that it was designed to provide machinery for general consideration of what legal questions could with advantage be referred to the Court.⁶

The Australian and Iranian proposals were supported in principle by a large majority of the delegates who participated in the Sixth Committee discussions. Sir Hartley Shawcross, representative of the United Kingdom, urged that in those fields where principles of law could be applied, the Court should not be disregarded as an agency for settling disputes. One reason, he suggested, why solutions had turned out not to be solutions was that decisions had been taken on political rather than on legal considerations. When a State felt that it had a strong legal case it would disregard any political decision taken by the United Nations.⁷

The proposals were criticized by Mr. Durdenevsky, representative of the Union of Soviet Socialist Republics, as either superfluous or contrary to the provisions of the Charter. He argued that if the Court were to become a world advisor, it would have to renounce, owing to lack of time, its primary function of deciding upon legal issues. He also feared that these proposals would result in substituting the Court for the Security Council in the solution of political problems.⁸

Mr. Lachs, the Polish representative, expressed the hope that the importance of the Court would increase in the course of time, but feared that

² UN Doc. A/C.6/134, 24 September 1947.

³ UN Doc. A/C.6/165, 8 October 1947.

⁴ UN Doc. A/C.6/164, 8 October 1947.

⁵ UN Docs. A/C.6/SR.44, 8 October 1947, and A/C.6/SR.45, 9 October 1947.

⁶ UN Doc. A/C.6/SR.44, p. 2, 8 October 1947.

⁷ Same, p. 4.

⁸ UN Doc. A/C.6/SR.45, pp. 3-4, 9 October 1947.

to force the Court to give decisions in political disputes might weaken its prestige. The representatives of Greece and Yemen also questioned the advisability of involving the Court in political disputes. The latter representative stated that preference was given by the Charter of the United Nations to political rather than legal methods in the settlement of disputes.⁹

As several amendments were suggested, the subject was referred to an *ad hoc* sub-committee composed of representatives of the authors of proposals (Australia and Iran), the proposers of amendments (Argentina, Colombia, Egypt, France and Poland), and the Rapporteur, Mr. Kaeckenbeeck of Belgium.

The *ad hoc* sub-committee sought to coördinate the various suggestions and to see that the draft resolutions conformed with the Charter. The sub-committee drafts were submitted to the Sixth Committee at its 52nd meeting as three separate draft resolutions.¹⁰

The first was based on the original Australian proposal, but the recommendation contained therein placed less emphasis on the use of the Court for the interpretation of the Charter.¹¹ The Australian proposal had suggested that the United Nations organs review regularly difficult and important questions of law "particularly questions of law relating to the interpretation of the Charter . . . with a view to requesting advisory opinions of the Court." The Committee draft urged the reviewing from time to time of difficult and important questions of law "including points of law relating to the interpretation of the Charter. . . ." Thus while not singling out questions of Charter interpretation by the Court for special attention, the draft contemplates nevertheless the desirability that such questions be referred to the Court by United Nations organs and specialized agencies. A second difference is that the recommendation was limited specifically to organs and specialized agencies duly authorized to request advisory opinions according to Article 96, paragraph 2 of the Charter.¹² This would avoid a possible interpretation of the recommendation as authorizing additional agencies to request opinions.

Mr. Kaeckenbeeck, the Rapporteur, in presenting the draft resolution to the Sixth Committee, explained that requests for advisory opinions should not be made in regard to an abstract hypothetical case likely to

⁹ Same, p. 5.

¹⁰ UN Doc. A/C.6/SR.52, 22 October 1947.

¹¹ UN Doc. A/C.6/167/Rev. 1, 14 October 1947.

¹² In addition to the Security Council, General Assembly, Economic and Social Council and Trusteeship Council, the following specialized agencies are authorized to request advisory opinions: International Labor Organization, United Nations Economic, Scientific and Cultural Organization, Food and Agricultural Organization, International Civil Aviation Organization, International Bank for Reconstruction and Development, International Monetary Fund, International Telecommunications Union, and the World Health Organization.

arise in the future, but on concrete points. It was desirable, he stated, that requests should be made by an organ or agency at an initial stage in its examination of a case in order to avoid an opinion of the Court contrary to a decision of the organ or agency. He further pointed out that the draft did not intend to make the Court an exclusive organ of interpretation. Other organs of the United Nations would continue interpreting the Charter. The Court would assist them in the accomplishment of their task.

The second draft resolution authorized the Trusteeship Council to request advisory opinions of the International Court of Justice on legal questions arising within the scope of the activities of the Council.¹³ The Trusteeship Council was the only principal organ of the United Nations, with the exception of the Secretariat, not already so authorized.

The third draft resolution was prepared on the basis of the Iranian proposal together with French suggestions.¹⁴ The imperative nature of the original recommendation to the States for the acceptance of compulsory jurisdiction of the Court was considerably modified. The attention of the States is drawn to the desirability of the greatest possible number of them accepting the jurisdiction with as few reservations as possible. The resolution also draws the attention of the Member States to the advantage of inserting in conventions and treaties arbitration clauses providing for the submission of disputes under such conventions to the International Court of Justice. Finally it recommends that states should as a general rule submit their legal disputes to the International Court of Justice. The recommendation to the Security Council, in the original Iranian proposal, to refer legal disputes to the International Court is omitted from the drafts prepared by the *ad hoc* sub-committee.

The draft resolutions were debated by the Sixth Committee on 22 October 1947 and accepted by a large majority of the Committee.¹⁵ The report was approved on 11 November 1947¹⁶ and presented to the 113th Plenary Meeting of the General Assembly on 14 November 1947.¹⁷ Poland placed the question of the right of the International Court of Justice to interpret the Charter in issue before the General Assembly by submitting an amendment which would strike from the first draft resolution the reference to the interpretation of the Charter. This amendment was rejected.

¹³ UN Doc. A/C.6/168/Rev.1, 14 October 1947.

¹⁴ UN Doc. A/C.6/169/Rev.1, 14 October 1947.

¹⁵ UN Doc. A/C.6/SR.52, pp. 9-10, 22 October 1947. The first resolution, recommending recourse to advisory opinions, was adopted by 39 votes to 7. The second resolution, authorizing the Trusteeship Council to request advisory opinions, was adopted by 38 votes to 0 with 6 abstentions. The third resolution, recommending acceptance of compulsory jurisdiction and submission of disputes to the Court was accepted by 37 votes to 5, with 5 abstentions.

¹⁶ UN Doc. A/459, and A/C.6/SR.55, 11 November 1947.

¹⁷ UN Doc. A/PV/113, 14 November 1947.

by a vote of 37 to 6 with 4 abstentions, and the resolutions were then accepted by the General Assembly.¹⁸

In discussion before the Sixth Committee and the Plenary Session of the General Assembly, close attention was given to the question whether the Court had the right to interpret the Charter. Speakers on both sides of the proposition placed considerable reliance on the records of the San Francisco Conference.¹⁹

Polish and Soviet representatives argued that the Court had no jurisdiction to interpret the Charter for other organs and agencies. Mr. Vishinsky stated that the interpretation of the Charter was primarily a political rather than a legal question.²⁰ The United Nations Charter, he said, could not be considered comparable to other treaties as it was a treaty *sui generis*.²¹ He further contended that the Australian draft resolution gave preference to interpretation by the International Court of Justice, which was only one of several means suggested at San Francisco for the interpretation of the Charter.

It was also argued that a similar Belgian proposal was rejected at San Francisco. The report of the Sixth Committee, however, explained that the Belgian proposal which had been rejected was one to constitute the Court as the constitutional organ for interpreting the Charter, whereas the question involved in the present resolution is only whether the Charter

¹⁸ *Id.* at 147-151 and 156 (Resolution 171 (II), A, B and C). The first and third resolutions were accepted by votes of 46 to 6 with 2 absentions, and 45 to 6 with 3 abstentions. The second resolution was adopted unanimously when the Soviet Union withdrew its objection, after expressing the view that the vote should not serve as a precedent for authorizing agencies to request advisory opinions prior to obtaining the consent of the agency.

¹⁹ Particular reliance was placed on the Report of the Sub-Committee IV/2/B, Doc. 887, IV/2/39, 9 June 1945. This report was reprinted at the request of the Delegation of the USSR as UN Doc. A/474, 13 November 1947. The following is an extract of this report:

In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. . . . Difficulties may conceivably arise in the event that there should be a difference of opinion among the organs of the Organization concerning the correct interpretation of a provision of the Charter. . . . If two member states are at variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice as in the case of any other treaty. Similarly, it would always be open to the General Assembly or to the Security Council, in appropriate circumstances, to ask the International Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter. Should the General Assembly or the Security Council prefer another course, an *ad hoc* committee of jurists might be set up to examine the question and report its views, or recourse might be had to a joint conference. In brief, the members or the organs of the Organization might have recourse to various expedients in order to obtain an appropriate interpretation. It would appear neither necessary nor desirable to list or to describe in the Charter the various possible expedients.

²⁰ UN Doc. A/PV/113, p. 111, 14 November 1947.

²¹ Same, p. 102.

or the Statute of the Court prevents advisory opinions from being requested or given because they relate to a point of interpretation of the Charter.²²

The majority of the representatives were of the view that the International Court of Justice was not precluded from giving an advisory opinion on a question of law by the fact that such a question related to the interpretation of the Charter of the United Nations. In fact, in the one request thus far made, the General Assembly has asked the Court to consider the application of Article 4 of the Charter concerning the admission of new members.²³ On the other hand, it is equally clear that the Court is not considered the only organ competent to interpret the Charter, nor necessarily the final authority.²⁴

Other points of controversy concerned the relative roles to be played by the Court and the Security Council in the settling of disputes, the principle of optional as opposed to compulsory jurisdiction,²⁵ and the question whether the repeating of clauses from the Charter made parts of the resolutions superfluous.²⁶ It was feared by some representatives that the resolutions might result in substituting the Court for the Security Council in the consideration of political matters. On the other hand the representative from Colombia objected that the Iranian-French draft resolution did not go far enough because it failed to recommend the use of the Court in political disputes.²⁷ The majority opinion, however, seems to be that while the resolutions of the General Assembly constitute a strong endorsement of the use of the International Court in legal controversies, they do not aim at replacing the Security Council or the General Assembly as the proper organs for dealing with political issues.

One final point deserves attention. In the preamble of the Australian resolution mention was made of the responsibility of the United Nations to encourage the progressive development of international law,²⁸ and to the importance of utilizing the Court in that development both in regard to legal issues between States and in regard to constitutional interpretation. It was pointed out that the role played by the Permanent Court of International Justice in the development of international law was considerable and that there was no reason why the International Court of Justice might not make an equal, or even greater, contribution.

²² UN Doc. A/459, p. 3, 11 November 1947.

²³ Resolution 113 (II) B, 17 November 1947.

²⁴ UN Doc. A/459, pp. 2-3, 11 November 1947.

²⁵ UN Doc. A/C.6/SR.52, p. 4, 22 October 1947; UN Doc. A/PV/113, pp. 51-61, 14 November 1947.

²⁶ UN Doc. A/PV/113, p. 116, 14 November 1947; A/C.6/SR.52, p. 8, 22 October 1947.

²⁷ UN Doc. A/C.6/SR.52, p. 6, 22 October 1947.

²⁸ The representative of Colombia abstained from voting on this paragraph as he considered it contrary to the spirit of the Charter which made the development of international law a General Assembly task. UN Doc. A/C.6/SR.52, p. 9, 22 October 1947.

UNITED NATIONS HEADQUARTERS AGREEMENT

The United Nations Headquarters Agreement was negotiated with the United States by the Secretary-General under authority of a General Assembly resolution.¹ It was signed on 26 June 1947 and submitted by the Secretary-General to the General Assembly.² The Agreement was referred to the Sixth Committee for consideration as to the question whether the Secretary-General should be authorized to proceed with an exchange of notes to bring the agreement into force. After a general discussion on 24 September 1947 the Sixth Committee in turn referred the Agreement to Sub-Committee 1 for deliberation and report.³

The Sub-Committee confined its study to the text of the Agreement, and to a comparison with the preliminary draft Agreement negotiated prior to the location of the permanent headquarters site in New York City.⁴ The selection of a small mid-town site in place of the large rural area originally envisaged rendered necessary certain adaptations, and most of the changes noted by the Sub-Committee were designed to meet these altered circumstances. Other changes incorporated in the present agreement represent improvements, from the point of view of the United Nations, in matters of telecommunication, establishment of postal service, and transit of invitees to the headquarters district.⁵

However in Section 13 of the Agreement a new element is introduced which gives to the United States Government the right to require an official of the United Nations or a representative of a Member Government to leave the territory of the United States in case of abuse of privileges in matters outside official duties.⁶ Sub-Committee 1 construed these provisions to mean that before any person can be required to leave the country on charges of abuse of privilege, "there must be really serious grounds, which would preclude the possibility of unwarranted accusations against such a person."⁷ Where the individual concerned possesses diplomatic immunity it is specifically stated in the Agreement that he shall be required to leave the United States "otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States."⁸ It should be obvious, however, that the principle of *persona non grata* does not apply under the provisions of this section.⁹

The Headquarters Agreement provides that its provisions are to be complementary to those of the General Convention on Privileges and Im-

¹ Resolution 99(I), 14 December 1946.

² UN Doc. A/371, 8 September 1947.

³ UN Doc. A/C.6/SR.36, 24 September 1947.

⁴ UN Doc. A/371, 3 September 1947, and Doc. A/67, 1 September 1946.

⁵ UN Doc. A/371, pp. 11, 12, 13, 3 September 1947.

⁶ UN Doc. A/427, p. 13, 27 October 1947.

⁷ Same, p. 4.

⁸ Section 13 (b) (3).

⁹ See UN Doc. A/371, p. 6, 3 September 1947, for Secretary-General's comment.

munities of the United Nations "as acceded to by the United States."¹⁰ As indicated in the report of the Sub-Committee, certain points in connection with matters covered by the General Convention were raised in the course of the Sub-Committee's deliberations owing to the fact that the United States had not yet acceded to this General Convention.¹¹ Particular concern was expressed concerning the probability, as indicated by correspondence from the United States, that certain reservations would be made to Section 18, paragraphs (a) and (b) of the General Convention on Privileges and Immunities. The paragraphs provided that United Nations officials should be exempt from taxation upon salaries and emoluments paid by the United Nations, and should be immune from national service. It was thought by the Sub-Committee that the United States would probably make reservations concerning these exemptions so far as they applied to American nationals. With regard to the immunity from national service, the Sub-Committee was of the opinion that if complete exemption could not be obtained, it was most desirable that there should be no possibility of the work of the United Nations being hampered by the calling of such officials. This point was commended for further discussion between the Secretary-General and the United States Government.¹²

Some other aspects of the Headquarters Agreement may be briefly reviewed. Article III deals with the Law and Authority in the Headquarters District. The control and authority of the United Nations is postulated, but federal, state and local laws of the United States continue to apply within the district, subject to the right of the United Nations to alter them by regulations necessary to the full execution of its functions.

The inviolability provisions of Section 9 will operate in addition to the immunities granted in the General Convention, but no right of asylum is recognized. Under Section 10 the United Nations may expel or exclude persons from the headquarters for cause. Section 19 provides that no form of racial or religious discrimination shall be permitted within the district.

Disputes arising between the United Nations and the United States concerning the interpretation or application of the Agreement are to be submitted to an arbitral tribunal established in accordance with the provisions of Section 21. These disputes specifically include questions of the applicable law under Article III mentioned above. Either the Secretary-General or the United States may ask the General Assembly to request an advisory opinion from the International Court of Justice on any legal question rising out of the course of proceedings before the arbitral tribunal. The tribunal is to render the final decision "having regard to the opinion of the Court."

¹⁰ See Sections 26 and 1(c). For General Convention see UN Doc. A/64, p. 25 (Resolution XIII (6)), 13 February 1946.

¹¹ UN Doc. A/C.6/172, p. 4, 17 October 1947.

¹² UN Doc. A/C.6/172, p. 5, 17 October 1947.

The draft resolution submitted by the Sub-Committee for the purpose of bringing the Agreement into immediate effect was approved unanimously by the Sixth Committee on 23 October 1947 and adopted by the General Assembly on 31 October 1947.¹³ As the Congress of the United States had already given its approval by joint resolution on 4 August 1947, the Agreement was brought into force by the necessary exchange of notes on 21 November 1947. Applicable provisions were extended to the interim headquarters site at Lake Success by the United States Government on 18 December 1947.

Almost immediately an incident occurred involving the application of the Headquarters Agreement. In December 1947, two newspaper correspondents accredited to the United Nations were arrested by United States authorities and detained for deportation as alien communists. Officials of the United Nations intervened on their behalf, citing Sections 11 and 13 of Article IV of the Headquarters Agreement.¹⁴ Section 11 extends transit privileges to representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations . . . in its discretion after consultation with the United States. According to Section 13, American laws and regulations regarding aliens are not to be applied so as to interfere with the privileges granted in Section 11.

The State Department objected that the correspondents, Kyriazidis, representing the newspaper *Demokratias* of Nicosia, Cyprus, and Hasan, representing the *People's Age* of Bombay, were re-accredited by the United Nations without consultation with the United States as provided in Section 11 of the Headquarters Agreement. The United States Government therefore did not consider them *bona fide* journalists.¹⁵

There also was some doubt expressed in the case of Kyriazidis whether the Agreement was applicable since he had been arrested on December 17, the day prior to the extension of the privileges to the Interim Headquarters by the United States Government.¹⁶

It was subsequently agreed that the two men should be released, but the United States suggested that to avoid any further misunderstandings the entire list of representatives of the press, radio, film and other informative agencies accredited by the United Nations in its discretion should be reviewed by the United Nations in consultation with the United States so as to bring all *bona fide* representatives clearly under the protection of the Agreement.¹⁷ Discussions along the lines suggested have since begun.

¹³ UN Doc. A/PV/101, pp. 82-90, 31 October 1947.

¹⁴ UN Press Release M/361, 22 December 1947, and M/362, 23 December 1947.

¹⁵ Note from the United States Mission to the United Nations, 18 *Department of State Bulletin*, p. 48, 11 January 1948.

¹⁶ Same.

¹⁷ Same, p. 49.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD NOVEMBER 1, 1947—JANUARY 31, 1948

(Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: *A. E. C. O. R.*, U. N. Atomic Energy Commission Official Records; *C. I. E. D.*, Chronology of International Events and Documents, Royal Institute of International Affairs; *C. S. Monitor*, Christian Science Monitor; *Cmd.*, Great Britain Parliamentary Papers by Command; *Cong. Rec.*, Congressional Record; *D. S. B.*, Department of State Bulletin; *E. S. C. O. R.*, United Nations Economic and Social Council Official Records; *F. A. O.*, Food & Agriculture Organization; *G. A. (II) J.*, Journal of the Second Session of the U. N. General Assembly; *G. A. (II) O. R.*, Official Records of the Second Session of the U. N. General Assembly; *G. B. M. S.*, Great Britain Miscellaneous Series; *G. B. T. S.*, Great Britain Treaty Series; *I. B. R. D.*, International Bank for Reconstruction and Development; *I. C. E. F.*, International Children's Emergency Fund; *I. E. F. C.*, International Emergency Food Council; *I. M. F.*, International Monetary Fund; *I. T. U.*, International Telecommunications Union; *N. Y. T.*, New York Times; *P. A. U.*, Pan American Union; *S. C. O. R.*, United Nations Security Council Official Records; *T. I. A. S.*, U. S. Treaties and other International Acts Series; *U. N. B.*, United Nations Bulletin; *U. N. W. B.*, United Nations Weekly Bulletin; *U. P. U.*, Universal Postal Union.

GENERAL*

April, 1947

21-May 28 SOVIET RUSSIA—UNITED STATES. U. S. Department of State made public on Dec. 4 the texts of Soviet note of Apr. 21 and U. S. reply concerning persons with claims to American citizenship who had been forcibly removed to the Soviet Union from various countries of eastern Europe and concerning Soviet women, married to American citizens, who had not been allowed to leave Russia. *N. Y. T.*, Dec. 5, 1947, p. 1. Texts: p. 11; *D. S. B.*, Dec. 14, 1947, pp. 1194-1195.

29-May 5 CANADA—FRANCE. Effected agreement by exchange of notes at Paris concerning war damage compensation. Text: *Canada Treaty Series*, 1947, No. 20.

June, 1947

5-January 5, 1948 EUROPEAN RECOVERY PROGRAM. Chronology of events involving Congressional debate on European aid: *N. Y. T.*, Jan. 6, 1948, p. 12.

25-August 20 CANADA—UNITED STATES. Effected interim agreement by exchange of notes at Washington concerning land mobile radio transmitting equipment. Text: *Canada Treaty Series*, 1947, No. 25; *T. I. A. S.* 1670.

July, 1947

24/28 CANADA—GREECE. Effected commercial *modus vivendi* by exchange of notes at Ottawa. Text: *Canada Treaty Series*, 1947, No. 21.

* See p. 460, below, for United Nations and Specialized Agencies; also p. 467 and following for United Nations agreements.

August, 1947

- 8 CANADA—IRELAND. Signed agreement at Dublin providing for air services between the two countries. Text, with exchange of notes: *Canada Treaty Series*, 1947, No. 19.
- 14 INDIA—PAKISTAN. The Governor General of India issued an order providing for the initial distribution of rights, property and liabilities of the Central and Provincial Governments of India consequent on the setting up of the two Dominions and the division of the Provinces. Later 10 expert committees and a steering committee were appointed to go into details of partition. Questions considered and provisions of the new agreement, agreed formula, etc.: India Information Services [*Press Release*] (Washington) No. 3603, Dec. 23, 1947.

September, 1947

- 15–December 31 TRIESTE. Report of the administration of the British-U. S. zone of the Free Territory for this period was sent Feb. 18, 1948, to the President of the U. N. Security Council. Text: U. N. Doc. S/679.
- 29 ARMISTICE (Finnish). Canada and Russia signed protocol at Ottawa supplementary to the Moscow Protocol of Oct. 8, 1944. The Supplementary protocol concerned alteration of the period of payment of installments due Canada. Text: *Canada Treaty Series*, 1947, No. 24.

October, 1947

- 16 COLOMBIA—GREAT BRITAIN. Signed air services agreement at Bogotá. Text, with annex, schedules and exchange of notes: *Colombia No. 1* (1947), Cmd. 7272.
- 30/January 1, 1948 CUBA—UNITED STATES. Signed at Geneva on Oct. 30 an exclusive agreement on tariffs and trade. *D. S. B.*, Jan. 4, 1948, p. 28. Text: p. 29. President Truman proclaimed the agreement Jan. 1, as effective immediately. *D. S. B.*, Jan. 11, 1948, p. 60.

November, 1947

- 1–January 16, 1948 TRIESTE. On Nov. 1 and 6 Yugoslavia sent protests to Great Britain and United States on violations of terms of Italian peace treaty. Texts: U. N. Docs. S/598 and S/600. The British reply of Jan. 15 denied accusations in both Yugoslav notes and accused Yugoslavia of violating the Hague convention as well as the Italian treaty terms. Text: U. N. Doc. S/652. U. S. notes of the 15th and 16th to Yugoslavia denied Yugoslav accusations and its right to interfere in the administration of the British-U. S. zone. Texts: U. N. Doc. S/656.
- 2 GREAT BRITAIN—POLAND. British Embassy in Warsaw announced signature of an agreement with regard to the principles of compensation to British claimants whose interest has been affected by the Polish nationalization law of Jan. 3, 1946. *London Times*, Nov. 3, 1947, p. 3. One provision calls for establishment of mixed commissions to examine each individual British claim. *N. Y. T.*, Nov. 13, 1947, p. 15; *London Times*, Nov. 14, 1947, p. 3.
- 3 WINANT, JOHN G. Former U. S. Ambassador to Great Britain, Director of the I. L. O. and U. S. member of the Economic and Social Council, died at Concord, N. H. *N. Y. T.*, Nov. 4, 1947, pp. 1, 17; *London Times*, Nov. 5, 1947, p. 4.
- 4 GOLD. United States, Great Britain, France and Austria signed protocol in London, providing for Austrian participation in the distribution of monetary gold, looted by Germany. Text: *D. S. B.*, Nov. 16, 1947, p. 959.

- 5-25 IRAN—SOVIET RUSSIA. In reply to Iran's note of Nov. 5 a Russian note, delivered the 20th, warned that Iran's cancellation of their oil agreement constituted a hostile act and that the Iranian Government must bear the consequences. Excerpts: *N. Y. T.*, Nov. 22, 1947, p. 1; *London Times*, Nov. 22, 1947, p. 4. The Premier rejected the Russian accusation Nov. 24. Text of statement: *N. Y. T.*, Nov. 25, 1947, p. 12; *London Times*, Nov. 26, 1947, p. 3. Iran's note of Nov. 25 rejected Soviet assertion of a policy hostile to the U. S. S. R. *C. I. E. D.*, Nov. 24/Dec. 7, 1947, p. 703.
- 9-10 SIAM. In a bloodless coup the Government of Premier Nawasuwat was overthrown by forces under Pibul Songgram, dictator from 1938-1944. *N. Y. T.*, Nov. 10, 1947, pp. 1, 13. A new constitution was promulgated the 10th, and Luang Aphaiwongse was appointed Premier. Members of Cabinet: *N. Y. T.*, Nov. 11, 1947, p. 3. An Advisory Council was set up to replace the Regency Council. *London Times*, Nov. 11, 1947, p. 3.
- 10 BELGIUM—NEW ZEALAND. Announced decision to establish diplomatic relations. *N. Y. T.*, Nov. 11, 1947, p. 10; *London Times*, Nov. 11, 1947, p. 8.
- 10 CHINA—UNITED STATES. Signed in Nanking an agreement providing that the \$20,000,000 received from the sale of American surplus property be used to train students in educational institutions of both countries. Text: *D. S. B.*, Nov. 23, 1947, pp. 1006-1008.
- 10 FRANCE—UNITED STATES. By proclamation President Truman granted an extension of time to and including June 30, 1948, for renewal of registration of trade-marks of French nationals in the United States, with respect to registrations expiring between Sept. 3, 1939 and July 5, 1947. *D. S. B.*, Nov. 23, 1947, p. 993.
- 10 NETHERLANDS—UNITED STATES. President Truman's proclamation granted an extension to and including June 30, 1948 for renewal of registration of trade-marks by Dutch nationals in the United States, with respect to registrations expiring between Sept. 3, 1939 and July 5, 1947. *D. S. B.*, Nov. 23, 1947, p. 993.
- 10 PROPERTY. Law No. 59, issued by the Military Government for Germany, U. S. Area of Control, regarding restitution of identifiable property, became effective. Text of Law: *This JOURNAL*, Vol. 42 (1948), Supplement, pp. 11-45.
- 10-15 CUSTOMS UNION. Delegates from 14 countries and observers from 8 others held at Brussels a conference known as a study group for a European customs union. Dr. D. P. Spierenburgh of the Netherlands was elected chairman. List of countries: *N. Y. T.*, Nov. 11, 1947, p. 17; *London Times*, Nov. 11, 1947, p. 3. Drafted at end of its first session a statement of the group's accomplishments. *N. Y. T.*, Nov. 15, 1947, p. 8. Bank for International Settlements will act as agent in keeping records and in informing the participating countries of possibilities for increased trade. *N. Y. T.*, Nov. 23, 1947, p. 35.
- 11/January 12, 1948 ITALIAN COLONIES. Announcement was made at Rome of an Italian note to the 4-power commission [of investigation decided upon Oct. 20 by Deputies of the Foreign Ministers] asking for a trusteeship for Eritrea. *London Times*, Nov. 12, 1947, p. 3. Italian memorandum to the Council of Foreign Ministers was delivered Jan. 12 to coincide with the arrival of the 4-power investigating commission. It requested Italian mandate for Somaliland. A similar request will be made for Libya. *N. Y. T.*, Jan. 13, 1948, p. 6.

- 12 FRANCE—POLAND. Signed agreement under which French owners of nationalized property in Poland would receive \$57,000,000 in compensation, about $\frac{1}{4}$ the estimated value of French investments. *N. Y. T.*, Nov. 13, 1947, p. 15.
- 14 BELGIUM—GREAT BRITAIN. Signed monetary agreement in London. Text: *G. B. T. S.* No. 83 (1947), *Cmd.* 7264.
- 14/15 CANADA—UNITED STATES. Exchanged aides-memoire regarding temporary modifications of their 1938 Trade Agreement. Texts: *D. S. B.* Nov. 30, 1947, pp. 1054–1055.
- 15/22 MIKOLAJCZYK, STANISLAW. Following his escape from Poland the Parliament proclaimed him “guilty of treason against the Polish State and nation,” deprived him of his Parliamentary seat and asked the Government to take away his Polish citizenship. *N. Y. T.*, Nov. 16, 1947, p. 30; *London Times*, Nov. 17, 1947, p. 3. The Polish Council of Ministers announced withdrawal of citizenship. *N. Y. T.*, Nov. 23, 1947, p. 49.
- 17 INDIA. Constituent Assembly met for the first time as the legislature of the Dominion of India. *N. Y. T.*, Nov. 18, 1947, p. 12; *London Times*, Nov. 18, 1947, p. 4.
- 18 INDIA—IRAN. Announced that diplomatic relations would be reestablished after a lapse of several centuries. India Information Services [*Press Release*] (Washington), No. 3563.
- 18 MARSHALL, GEORGE C. In address at Chicago Secretary Marshall accused Russia of deliberately blocking European recovery and stated the United States would not “stand by and watch the disintegration of the international community to which we belong.” *N. Y. T.*, Nov. 19, 1947, p. 1. Text: p. 8; *D. S. B.*, Nov. 30, 1947, pp. 1024–1028; Dept. of State *European Series* No. 31.
- 18/28 PAYMENTS AGREEMENT. Representatives of France, Italy, Belgium, Netherlands and Luxembourg signed agreement at Paris on the 18th. *N. Y. T.*, Nov. 30, 1947, p. 20. Announcement was made at Basel Nov. 28 that Great Britain, Sweden, Denmark and Norway had provisionally joined the agreement. *N. Y. T.*, Nov. 29, 1947, p. 3.
- 19 MEXICO—UNITED STATES. Announcement was made of Mexico’s payment of its 6th annual installment under the Claims Convention of Nov. 19, 1941. *D. S. B.*, Nov. 30, 1947, p. 1058.
- 19 RUHR COAL PRODUCTION. U. S. and British Military Governments turned over to German agencies the responsibility for the coal production. *London Times*, Nov. 20, 1947, p. 4.
- 19–December 4 AUSTRIAN OCCUPATION. New currency law, approved Nov. 19 by the Austrian Parliament, subject to confirmation by the Allied Council, cancelled more than 11 billion schillings of frozen deposits in banks and institutions. *N. Y. T.*, Nov. 20, 1947, p. 22. Russia agreed Dec. 2 and the Council approved the law on Dec. 4. *London Times*, Dec. 4, 1947, p. 3 and Dec. 5, 1947, p. 3; *N. Y. T.*, Dec. 5, 1947, p. 6.
- 20 GOLD. Gold, belonging to Belgium and Luxembourg, sent to the Bank of France for safekeeping before the German invasion and seized by the Nazis, was consigned from Frankfurt to Paris for preliminary distribution. *London Times*, Nov. 21, 1947, p. 3.
- 21 REPARATIONS (Rumanian). Moscow Foreign Office announced that Russia had waived its right to collect additional reparations in case Rumania should fall behind in its payments. *N. Y. T.*, Nov. 22, 1947, p. 6.

- 25 GREAT BRITAIN—SWEDEN. Signed at London a monetary agreement which will come into force May 1, 1948. *N. Y. T.*, Nov. 26, 1947, pp. 6, 35.

25-December 15 COUNCIL OF FOREIGN MINISTERS. Fifth session was held in London. *N. Y. T.*, Nov. 26, 1947, p. 1. Provisional U. S. delegation: *D. S. B.*, Nov. 23, 1947, pp. 987-988. Delegates: *London Times*, Nov. 26, 1947, p. 4. Russia rejected Nov. 27 U. S. plan to study German frontiers. *N. Y. T.*, Nov. 28, 1947, p. 1. Text of Soviet plan for Germany: *N. Y. T.*, Nov. 29, 1947, p. 5. Text of Secretary Marshall's statement of Dec. 4 on the Austrian peace treaty: *N. Y. T.*, Dec. 5, 1947, p. 7. Texts of various statements by Secretary Marshall on Dec. 4-5: *D. S. B.*, Dec. 14, 1947, pp. 1183-1185, 1193. Soviet proposals of Dec. 6 and 8 on Germany. Text of Secretary Marshall's statement of Dec. 10 regarding the question of reparations from current production: *D. S. B.*, Dec. 21, 1947, p. 1205. Session ended Dec. 15 with no agreement on a peace settlement for Germany and Austria, and with no date set for any future conference. *London Times*, Dec. 16, 1947, p. 4; *N. Y. T.*, Dec. 16, 1947, p. 1. Text of Secretary Marshall's statement at final meeting: p. 3; *World Report*, Dec. 23, 1947, pp. 34-35; *D. S. B.*, Dec. 28, 1947, p. 1247. Text of radio report by Secretary Marshall on Dec. 19: *N. Y. T.*, Dec. 20, 1947, p. 4; *D. S. B.*, Dec. 28, 1947, pp. 1244-1247. Text of Mr. Bevin's statement on the breakdown of the conference: *London Times*, Dec. 17, 1947, p. 3. Summary and extracts: *C. I. E. D.*, Dec. 8/21, 1947, pp. 732-733. Text of Mr. Molotov's statement: *London Times*, Jan. 1, 1948, p. 4. Summary: *C. I. E. D.*, Dec. 22, 1947/Jan. 9, 1948, pp. 28-30.

- 26 GERMAN OCCUPATION. The Governments of Belgium, the Netherlands and Luxembourg (Benelux), presented a joint note to the Council of Foreign Ministers and also to the Governments of the Big Four outlining their views on Allied policy toward Germany. Summary: *London Times*, Nov. 27, 1947, p. 3.

27-December 22 FRANCE—SOVIET RUSSIA. France asked Russia to recall repatriation mission from France. *N. Y. T.*, Dec. 11, 1947, p. 15. Russian note, delivered Dec. 9, breaking off trade and repatriation negotiations, claimed France was unilaterally annulling their repatriation agreement of June 29, 1945. Text: *N. Y. T.*, Dec. 10, 1947, p. 12. France rejected the note on Dec. 10. *N. Y. T.*, Dec. 11, 1947, pp. 1, 15. French notes of the 11th and 12th reiterated French stand. *N. Y. T.*, Dec. 12, 1947, pp. 1, 5; Dec. 13, p. 4. Soviet note of the 22d protested French refusal to allow a party of Armenians to return to the U. S. S. R. *C. I. E. D.*, Dec. 22, 1947/Jan. 9, 1948, p. 28. Text of statement by the head of French repatriation mission in the U. S. S. R.: *USSE Information Bulletin*, Dec. 24, 1947, pp. 15, 21.

27/January 9, 1948 BULGARIA—YUGOSLAVIA. Signed a treaty of friendship, collaboration and mutual aid at Varna, Bulgaria. *London Times*, Nov. 28, 1947, p. 3; *N. Y. T.*, Nov. 28, 1947, p. 2. Main provisions summarized: *N. Y. T.*, Nov. 29, 1947, p. 6. Yugoslav National Assembly ratified Jan. 9. *N. Y. T.*, Jan. 10, 1948, p. 2.

- 28 ITALY—YUGOSLAVIA. Signed at Rome a trade agreement covering exchanges for more than \$250,000,000. *N. Y. T.*, Nov. 29, 1947, p. 6.

28/January 8, 1948 PEACE TREATY (Japanese). Moscow radio announced that Russia had proposed a January meeting of the Foreign Ministers of China, Russia, Great Britain and the United States to discuss preparation of a treaty. *N. Y. T.*, Nov. 28, 1947, p. 1. British Government replied Dec. 12 to Chinese and Russian notes relative to preparation for a conference. Summary: *C. I.*

E. D., Dec. 8/21, 1947, pp. 731-732. Soviet note to China was published Jan. 4 in Moscow and stated that the first work on the treaty should be done by the four Powers in whose name the terms of capitulation were signed. Summary and comment: *London Times*, Jan. 5, 1948, p. 3. Chinese note had proposed that all members of the Far Eastern Commission should take part in the peace conference but that the Commission's present voting rules should apply. *C. I. E. D.*, Dec. 22, 1947/Jan. 9, 1948, p. 30.

December, 1947

- 4/5 GREAT BRITAIN—UNITED STATES. By exchange of notes the two countries agreed to a resumption of withdrawals by Great Britain against the line of credit established by the Anglo-American financial agreement. Texts: *D. S. B.*, Dec. 21, 1947, pp. 1222-1223.
- 4/9 BULGARIA. New constitution was adopted. *N. Y. T.*, Dec. 5, 1947, p. 10. Came into force on the 9th. *C. I. E. D.*, Dec. 8/21, 1947, p. 722.
- 5 ARMS TRAFFIC. United States ordered discontinuance of licensing of all shipments of arms to specified countries in the Middle East. *D. S. B.*, Dec. 14, 1947, p. 1197.
- 5 FINLAND—UNITED STATES. Presidential Proclamation 2759 extended the time until June 30, 1948, for renewing trade-mark registrations with respect to Finland. *D. S. B.*, Dec. 21, 1947, p. 1224. Text: 12 *Federal Register* 8223.
- 5/January 5, 1948 GERMAN PROPERTY. United States, Canada and the Netherlands signed at Brussels an agreement on conflicting claims to German enemy assets. Yugoslavia, while participating in the negotiations, refused to sign because of disagreement with the definition of Nazi assets. The agreement is open for signature to members of the Inter-Allied Reparation Agency, as well as South American and neutral countries. *N. Y. T.*, Dec. 6, 1947, p. 4; *D. S. B.*, Dec. 14, 1947, pp. 1192-1193. Text of agreement and annex: *D. S. B.*, Jan. 4, 1948, pp. 6-13. Belgium signed the agreement Jan. 5. *D. S. B.*, Jan. 18, 1948, p. 93.
- 7 BUTLER, NICHOLAS MURRAY. Died at the age of 85 years. *N. Y. T.*, Dec. 7, 1947, p. 1; *London Times*, Dec. 8, 1947, p. 4.
- 8/January 9, 1948 HUNGARY—YUGOSLAVIA. Signed at Budapest a treaty of friendship, coöperation and mutual aid. *London Times*, Dec. 9, 1947, p. 4; *N. Y. T.*, Dec. 9, 1947, p. 12. The treaty was ratified Jan. 9 by the Yugoslav National Assembly. *N. Y. T.*, Jan. 10, 1948, p. 2.
- 8-17 ARAB LEAGUE. Met at Cairo to take steps for combating the U. N. decision to partition Palestine. *N. Y. T.*, Dec. 9, 1947, pp. 1, 14; *London Times*, Dec. 9, 1947, p. 4. The conference ended with issuance of a formal statement. Extracts: *London Times*, Dec. 18, 1947, p. 4; *N. Y. T.*, Dec. 18, 1947, p. 4.
- 9 REPARATIONS (German). Announcement was made that Russia had agreed to ship goods and raw materials in payment for reparations received from the western zones of Germany, and that Soviet representatives had assured the Inter-Allied Reparation Agency in Brussels and chiefs of Allied Military Governments in Berlin that 5,000,000 reichsmarks worth of goods would be shipped by February as a first installment. *N. Y. T.*, Dec. 10, 1947, p. 19.
- 10 BURMA—UNITED STATES. Ambassador of Burma presented his credentials. *D. S. B.*, Dec. 21, 1947, p. 1227.
- 10 CZECHOSLOVAKIA—SOVIET RUSSIA. Signed 5-year trade agreement in Moscow. *C. I. E. D.*, Dec. 8/21, 1947, p. 749.

- 10 GREAT BRITAIN—YUGOSLAVIA. Yugoslav note informed Great Britain that their agreement on the repatriation of displaced persons was a "failure." *N. Y. T.*, Dec. 16, 1947, p. 16.
- 10-23 PANAMA—UNITED STATES. Signed Dec. 10 an agreement granting to the United States continued use of a large air base, and 13 other defense sites. *D. S. B.*, Dec. 21, 1947, p. 1219; *N. Y. T.*, Dec. 11, 1947, p. 28. Text: Dept. of State *Press Notice* No. 967, Dec. 12, 1947. On Dec. 22 the National Assembly of Panama refused to ratify the agreement. *N. Y. T.*, Dec. 23, 1947, p. 1; *D. S. B.*, Jan. 4, 1948, p. 31. The United States announced decision the 23d to abandon immediately all air bases in Panama outside the Canal Zone. *N. Y. T.*, Dec. 24, 1947, p. 1.
- 11/12 GOLD SUBSIDIES. The International Monetary Fund and the U. S. Secretary of the Treasury issued statements on gold subsidies policy. Texts: *D. S. B.*, Dec. 28, 1947, pp. 1268-1269.
- 12-January 21, 1948 INDIA—PAKISTAN. Details of the financial agreements between them were revealed in a statement to the Indian Legislative Assembly by the Deputy Prime Minister. Summary: *N. Y. T.*, Dec. 13, 1947, p. 8; *London Times*, Dec. 13, 1947, p. 3; India Information Services [*Press Release*] (Washington) No. 3601. Pakistan demanded from the Reserve Bank of India the transfer of Rs. 55 crores of the cash balances, claiming the Bank held balances in trust for both governments. *London Times*, Jan. 8, 1948, p. 3. Indian delegate, in letter of Jan. 21 to the President of the Security Council, announced that his Government had decided to share the cash balances with Pakistan. Text of letter: U. N. Doc. S/657.
- 13 HUNGARY—NETHERLANDS. Signed trade agreement at Budapest. *N. Y. T.*, Dec. 14, 1947, p. 33.
- 13 ITALY—UNITED STATES. President Truman issued statement expressing continuing U. S. interest in preserving a free and independent Italy. Text: *D. S. B.*, Dec. 21, 1947, p. 1221.
- 14 BULGARIAN OCCUPATION. Russian troops completed the evacuation of Bulgaria. *N. Y. T.*, Dec. 15, 1947, p. 1, and Dec. 18, p. 11.
- 14 ITALIAN OCCUPATION. The last U. S. occupation troops sailed for home. *D. S. B.*, Dec. 28, 1947, p. 1269.
- 14 SOVIET RUSSIA. Announced plan to devalue the ruble, beginning Dec. 16. *N. Y. T.*, Dec. 15, 1947, p. 1. Text of decree: p. 6; *World Report* (Washington) Dec. 23, 1947, pp. 37-39; *USSR Information Bulletin* (Washington) Dec. 24, 1947, pp. 4-5.
- 15 BRIGA—TENDA. Under the law published this day, former Italian citizens of the area, annexed to France under the Italian peace treaty, will be considered as French. Those wishing to remain Italian must make a formal declaration and must leave within a year. *N. Y. T.*, Dec. 16, 1947, p. 10.
- 16 ALBANIA—BULGARIA. Signed at Plovdiv, Bulgaria, pact of friendship and mutual assistance and a protocol concerning economic agreements. *London Times*, Dec. 17, 1947, p. 4.
- 16 GOLD. United States, Great Britain, France and Italy signed a protocol in London, permitting Italy to share in the gold looted by Germany during the war. *N. Y. T.*, Dec. 17, 1947, p. 13. *D. S. B.*, Dec. 28, 1947, p. 1269.

- 16 HUNGARIAN OCCUPATION. Announcement was made that the United States had notified Hungary of its withdrawal of all U. S. military forces and of its return of 658,000 florins and all Hungarian Government goods. Great Britain sent similar note. *N. Y. T.*, Dec. 17, 1947, p. 4.
- 16 ITALIAN NAVY. Announcement was made that Great Britain, France, United States and Russia had agreed to allow Italy to salvage for scrap 31 submarines due to be scuttled under terms of the Italian peace treaty. *N. Y. T.*, Dec. 17, 1947, p. 12.
- 17 FRANCE—ITALY. Signed agreement in Paris by which Italy agreed to pay to France an indemnity of 15 million lire in return for French renunciation of the liquidation of Italian property and wealth in French territory. *N. Y. T.*, Dec. 18, 1947, p. 12.
- 17 GERMAN OCCUPATION. United States and Great Britain signed agreement at Washington, amending certain terms of the bizonal fusion agreement, signed at New York on Dec. 2, 1946. *N. Y. T.*, Dec. 18, 1947, p. 1; *London Times*, Dec. 18, 1947, p. 4. Text of British Foreign Office statement: p. 4. Text of agreement: *D. S. B.*, Dec. 28, 1947, pp. 1263-1267; *United States No. 1* (1947), *Cmd. 7287*. General summary: *D. S. B.*, Dec. 28, 1947, pp. 1262-1263. Text of French protest on plan: *N. Y. T.*, Jan. 29, 1948, p. 14.
- 18 SOUTH AFRICA—UNITED STATES. Signed an extradition treaty in Washington. *London Times*, Dec. 22, 1947, p. 3; *D. S. B.*, Dec. 28, 1947, p. 1270.
- 18/January 21, 1948 ITALY—UNITED STATES. Exchanged notes at Washington whereby Italy donates the free use of sites in Italy for U. S. military cemeteries, so long as such sites are so used. Texts: *D. S. B.*, Feb. 22, 1948, p. 250.
- 19 BURMA—UNITED STATES. Signed at Rangoon a \$3,000,000, 15-yr. arrangement to exchange students and specialists. *D. S. B.*, Jan. 4, 1948, p. 27.
- 19 FINLAND—UNITED STATES. U. S. note to Finland stated that the United States did not propose to invoke the provisions of Art. 29 of the Treaty of Peace with Finland, 1947, with respect to claims of Finnish ship owners for just compensation under the provisions of Public Law No. 101, approved June 6, 1941. *D. S. B.*, Jan. 11, 1948, pp. 62-63.
- 19 GREAT BRITAIN—UNITED STATES. Announcement was made that the United Kingdom had requested that sect. C of schedule XIX of the General Agreement on trade and tariffs, signed at Geneva, Oct. 30, 1947, be suspended pending its renegotiation. *D. S. B.*, Dec. 28, 1947, p. 1261.
- 19/January 9, 1948 RUMANIA—YUGOSLAVIA. Announced signature of a treaty of friendship, collaboration and mutual assistance. *N. Y. T.*, Dec. 20, 1947, p. 2; *C. I. E. D.*, Dec. 8/21, 1947, p. 742. The treaty was ratified Jan. 9 by the Yugoslav National Assembly. *N. Y. T.*, Jan. 10, 1948, p. 2.
- 22 CZECHOSLOVAKIA—NETHERLANDS. Signed trade agreement. *C. I. E. D.*, Dec. 22, 1947/Jan. 9, 1948, p. 3.
- 22 GREAT BRITAIN—PERU. Concluded an aviation agreement. *C. I. E. D.*, Dec. 22, 1947/Jan. 9, 1948, pp. 19-20.
- 22/February 8, 1948 CUSTOMS UNION. Representatives of France and Italy signed a final report, strongly recommending a customs union. *N. Y. T.*, Dec. 23, 1947, p. 4; *London Times*, Dec. 24, 1947, p. 3. French Council of Ministers approved the report Feb. 8. *London Times*, Feb. 9, 1948, p. 4.

- 23 NORWAY—SOVIET RUSSIA. Announced an agreement providing for a mutual exchange of goods in 1948. They also announced that a joint border commission had completed its task of delimiting their common frontier. *N. Y. T.*, Dec. 24, 1947, p. 5.
- 24 DOMINICAN REPUBLIC—NICARAGUA. Announced resumption of diplomatic relations. *N. Y. T.*, Dec. 25, 1947, p. 22.
- 24 GREECE (Free). Establishment of the "First Provisional Democratic Government of Free Greece" was proclaimed from "somewhere in Free Greece." *London Times*, Dec. 27, 1947, p. 4; *N. Y. T.*, Dec. 25, 1947, p. 1.
- 25 CHINA. New Constitution was proclaimed as in force this day. *N. Y. T.*, Dec. 26, 1947, p. 3; *London Times*, Dec. 29, 1947, p. 3.
- 26 CANADA—UNITED STATES. Exchanged notes Dec. 26 in Washington providing for the continuance of their provisional fur seal agreement [reached by exchange of notes, Dec. 8/19, 1942], until a permanent convention can be arranged. Text: *D. S. B.*, Jan. 18, 1948, p. 94.
- 26 EUROPEAN RELIEF. President Truman issued Executive Order 9914, providing for the administration of the Foreign Aid Act of 1947. Text: *D. S. B.*, Jan. 4, 1948, p. 24; 12 *Federal Register* 8867.
- 27 GREAT BRITAIN—SOVIET RUSSIA. Signed major short-term trade and payments agreement at Moscow. *N. Y. T.*, Dec. 28, 1947, p. 3; *London Times*, Dec. 29, 1947, p. 4. Text of joint communique: *N. Y. T.*, Dec. 29, 1947, p. 11. Text of treaty: *Soviet Union* No. 1 (1948), *Cmd.* 7297.
- 29 ARGENTINA—GREAT BRITAIN. Argentina announced that their Sept. 1946 trade agreement had been made ineffective by British action in announcing non-convertibility of sterling without consulting Argentina, which therefore claimed full freedom of action in regard to disposal of future exportable meat surplus. *N. Y. T.*, Dec. 30, 1947, p. 6.
- 30 REPARATIONS (German). Fourteenth session of Inter-Allied Reparation Agency Assembly closed. Summary of awards: *N. Y. T.*, Dec. 31, 1947, p. 8.
- 30/January 9, 1948 RUMANIA. King Michael abdicated Dec. 30 and the Government immediately proclaimed a "Peoples Republic." Texts of proclamations by the King and Parliament: *N. Y. T.*, Dec. 31, 1947, p. 7; *London Times*, Dec. 31, 1947, p. 4. Members of the new State Council: *C. I. E. D.*, Dec. 22, 1947/Jan. 9, 1948, p. 20. On Jan. 9 the Government published a decree turning over most of the powers of the Rumanian throne to a "high praesidium." A new flag and coat of arms were also proclaimed. *N. Y. T.*, Jan. 10, 1948, p. 3.
- 30-January 7, 1948 GREEK (Free) RECOGNITION. U. S. Under Secretary of State Lovett issued statement warning that recognition of the Greek rebel government would have serious implications and violate the United Nations Charter. Text: *N. Y. T.*, Dec. 31, 1947, p. 1; *D. S. B.*, Jan. 11, 1948, p. 59. British Foreign Office spokesman announced approval of the Secretary's statement. *N. Y. T.*, Jan. 1, 1948, p. 16. On Jan. 7 announcement was made that U. S. diplomatic representatives had communicated to Bulgarian and Yugoslav Governments a warning not to recognize the regime of General Markos Vafiades. *N. Y. T.*, Jan. 8, 1948, p. 16.
- 31 BULGARIA—YUGOSLAVIA. Agreement signed August, 1947, abolishing visas and police controls over border crossing, came into force. *N. Y. T.*, Jan. 2, 1948, p. 4.

- 31 U. N. R. E. A. Official life of the organization came to an end. *N. Y. T.*, Dec. 31, 1947, p. 10.

January, 1948

- 1 BELGIUM—LUXEMBOURG—NETHERLANDS. Customs union agreement came into force. *N. Y. T.*, Jan. 2, 1948, p. 8.
- 1 GREAT BRITAIN—ITALY. Reciprocal abolition of visas would become effective, according to announcement of Dec. 12. *London Times*, Dec. 13, 1947, p. 4.
- 1 ITALY. The new constitution came into effect. *N. Y. T.*, Jan. 2, 1948, p. 9.
- 2 AUSTRIA—UNITED STATES. Signed agreement for interim aid to Austria. *N. Y. T.*, Jan. 3, 1948, p. 1. *D. S. B.*, Jan. 11, 1948, p. 52. Text: *Cong. Rec.* (daily) Mar. 2, 1948, pp. 2044-2045.
- 2 FRANCE—UNITED STATES. Signed agreement in Paris providing for interim aid to France. *D. S. B.*, Jan. 11, 1948, p. 50; *N. Y. T.*, Jan. 3, 1948, p. 1. Text: p. 8; *Cong. Rec.* (daily) Mar. 2, 1948, pp. 2045-2046.
- 2 ITALY—UNITED STATES. Signed at Rome an interim aid agreement. *London Times*, Jan. 5, 1948, p. 3; *N. Y. T.*, Jan. 4, 1948, p. 7; *D. S. B.*, Jan. 11, 1948, p. 51. Text: *Cong. Rec.* (daily) Mar. 2, 1948, pp. 2048-2044.
- 2-27 CREDITS, YUGOSLAV. Yugoslav note was handed to U. S. Under Secretary of State, demanding release of Yugoslav funds totaling 60-70 million dollars, including \$56,000,000 in gold. *N. Y. T.*, Jan. 6, 1948, pp. 1, 3. U. S. note, delivered the 14th, rejected request. Texts of both notes: *D. S. B.*, Jan. 25, 1948, pp. 117-119. Yugoslav note of the 27th to the United Nations accused the United States of "obstructing the economic reconstruction of Yugoslavia" by not returning its gold. Text: U. N. Doc. E/624. The complaint will be considered by the Economic and Social Council at its next session. *N. Y. T.*, Jan. 28, 1948, p. 5.
- 4 BURMA. Became an independent sovereign state. *N. Y. T.*, Jan. 4, 1948, pp. 1, 11. Sao Shwe Thaik was installed as first President. *London Times*, Jan. 5, 1948, p. 4.
- 5 REPARATIONS (Japanese). U. S. Department of State issued a statement affirming that the United States had made no secret agreements or commitments to other nations regarding reparations from Japan. Text: *D. S. B.*, Jan. 18, 1948, pp. 92-93.
- 5-10 PAN AMERICAN CHILD CONGRESS. Ninth session was held at Caracas. U. S. delegates: *D. S. B.*, Jan. 11, 1948, p. 62. Short summary of the meeting: *N. Y. T.*, Jan. 11, 1948, p. 13.
- 7-8 GERMAN OCCUPATION. British and U. S. Military Governors, ministers president, representatives of the two military governments and of the Bizonal Economic Council met in Frankfurt to consider measures for strengthening the fusion of the two zones. Decisions reached: *Information Bulletin*, magazine of U. S. Military Government in Germany, Jan. 27, 1948, pp. 14-17; *N. Y. T.*, Jan. 9, 1948, pp. 1, 17.
- 8 GERMAN OCCUPATION. Secretary Marshall announced that the Department of State expected to take over on June 30 the civil regime in the American zone. *N. Y. T.*, Jan. 9, 1948, p. 4.
- 8 GREAT BRITAIN—PHILIPPINE REPUBLIC. Announced conclusion of an aviation agreement granting terminal and transit rights for commercial companies in each other's territory. *London Times*, Jan. 8, 1948, p. 3.

- 9 GREAT BRITAIN—PORTUGAL. Exchanged notes at Lisbon abrogating their supplementary monetary agreement of Feb. 26, 1947. The principal monetary agreement will remain in force. *N. Y. T.*, Jan. 13, 1948, p. 6; *London Times*, Jan. 13, 1948, p. 4. Text of notes: *Cmd.* 7302.
- 12 COSTA RICA—UNITED STATES. Signed their first consular convention at San José. *N. Y. T.*, Jan. 14, 1948, p. 2; *D. S. B.*, Mar. 7, 1948, p. 314. Text: Dept. of State Press Notice No. 33, Jan. 13, 1948.
- 13 INDONESIA. Dutch Government installed an Interim Government, made up of 7 representatives of Dutch-controlled areas. An 8th member will be named later. Members: *N. Y. T.*, Jan. 14, 1948, p. 11.
- 15 EUROPEAN RECOVERY PROGRAM. British Foreign Office made available the text of the so-called "Protocol M," embodying the Communist plans for disrupting operation of the Marshall Plan. Text: *N. Y. T.*, Jan. 16, 1948, p. 2.
- 15-February 4 GREAT BRITAIN—IRAQ. Signed at Portsmouth a 20-year treaty of alliance on Jan. 15, to replace their 1930 treaty. *N. Y. T.*, Jan. 16, 1948, p. 3; *London Times*, Jan. 16, 1948, p. 4. Summary: p. 3. Iraqi Regent announced the 21st that the treaty would not be ratified. *N. Y. T.*, Jan. 22, 1948, p. 14. Text of statement: *London Times*, Jan. 22, 1948, p. 4. The Cabinet resigned Jan. 27. *N. Y. T.*, Jan. 28, 1948, p. 1. On Feb. 4 the new Cabinet rejected the treaty. *N. Y. T.*, Feb. 5, 1948, p. 6.
- 16/26 BULGARIA—RUMANIA. Signed Jan. 16 a treaty of friendship, collaboration and military alliance. *London Times*, Jan. 17, 1948, p. 3. Brief extracts: *London Times*, Jan. 21, 1948, p. 3. The Bulgarian Parliament ratified on the 26th. *N. Y. T.*, Jan. 27, 1948, p. 2.
- 17 GOLD. Announcement was made that the Federal Reserve Bank of New York had released 58,000 oz. of Greek gold. *N. Y. T.*, Jan. 18, 1948, p. 24.
- 20 GERMAN OCCUPATION. At a meeting of the Allied Control Council, the Russian member demanded dissolution of the joint Anglo-American economic administration of their zones, on the ground that the Potsdam agreement had been violated. *N. Y. T.*, Jan. 21, 1948, pp. 1, 8.
- 20-February 1 ANTARCTIC REGIONS. Argentina announced a new and permanent radio station, with a small naval detachment on Deception Island, in the South Orkneys, part of the British-claimed Falkland Island Dependencies. *London Times*, Jan. 21, 1948, p. 4. British note protested this action. *London Times*, Jan. 24, 1948, p. 3. Argentina's reply was delivered on Jan. 28. *London Times*, Jan. 30, 1948, p. 4. Announcement was made Feb. 1 that Great Britain had re-established bases in the Falkland Island Dependencies. *London Times*, Feb. 2, 1948, p. 3. Summary of correspondence: *London Times*, Feb. 9, 1948, p. 4.
- 21 JAPANESE OCCUPATION. United States notified the Far Eastern Commission of its intention to take steps to make Japan "self-supporting at the earliest possible time." Text of statement: *N. Y. T.*, Jan. 22, 1948, p. 10.
- 21 MALAYA. Rulers of 9 Malay States signed pacts with Great Britain at Kuala Lumpur, creating the Federation of Malaya, leaving only the Crown Colony of Singapore remaining under British rule, outside the Federation. The Governor and Commander in Chief of the Union will issue Feb. 1st an Order in Council, establishing the Federation on a going basis. *N. Y. T.*, Jan. 22, 1948, p. 16.

- 21/February 3 SOVIET RUSSIA—UNITED STATES. Russia protested to the United States and Great Britain over U. S. proposals to reopen Mellaha airbase, outside Tripoli. *N. Y. T.*, Jan. 29, 1948, p. 1. The U. S. reply, delivered Feb. 3, stated that the United States did not consider arrangements for use of the field in any way "inconsistent" with terms of the Italian peace treaty. Texts of both notes: *D. S. B.*, Feb. 15, 1948, p. 220. Partial texts: *N. Y. T.*, Feb. 4, 1948, p. 10.
- 22 CZECHOSLOVAKIA—NEW ZEALAND. Signed agreement in London whereby Czechoslovakia will be granted by New Zealand a credit of one million New Zealand or British pounds sterling for the immediate purchase of wool. *Central European Observer* (London) Feb. 6, 1948, p. 26.
- 22 GERMANY—SOVIET RUSSIA. U. S. Department of State made public the texts of 260 hitherto secret documents from captured German archives, regarding German-Soviet relations between signature of their non-aggression pact of Aug. 23, 1939 and Aug. 22, 1941, when Germany attacked Russia. *N. Y. T.*, Jan. 22, 1948, p. 1. Excerpts: pp. 18-20; Jan. 23, pp. 18-19. Text: Dept. of State Publication No. 3023.
- 22/29 CUSTOMS UNION. French Government issued statement on exchanges of views with other countries. Text: *London Times*, Jan. 23, 1948, p. 3. Announcement was made the 29th that France had proposed to the Benelux group that a preliminary study be made of the possibility of a union between France and those countries. *London Times*, Jan. 30, 1948, p. 4.
- 23 NICARAGUA. New constitution came into force. *N. Y. T.*, Jan. 24, 1948, p. 4.
- 24 HUNGARY—ROMANIA. Signed at Budapest a military and friendship treaty, providing for joint military action against any attacking nation. *N. Y. T.*, Jan. 25, 1948, p. 32.
- 24/28 GERMAN PROPERTY. Russian proposals for the settlement of Soviet claims on German assets in Austria were delivered to the international secretariat of the Council of Foreign Ministers in London. *N. Y. T.*, Jan. 25, 1948, p. 26. U. S. Department of State announced Jan. 28 receipt of the proposals. Text of U. S. statement: *D. S. B.*, Feb. 8, 1948, p. 191.
- 25 FRANCE. Announced multiple exchange rate for the franc and creation of a free market for gold and dollars. *London Times*, Jan. 26, 1948, p. 4; *N. Y. T.*, Jan. 26, 1948, p. 1. Texts of statements: p. 4.
- 26 BULGARIA. Announcement was made of decree nationalizing industry, with the exception of foreign- and coöperative-owned enterprises. *London Times*, Jan. 26, 1948, p. 3.
- 26 POLAND—SOVIET RUSSIA. Concluded 5-year trade treaty at Moscow. *London Times*, Jan. 28, 1948, p. 4. Purported terms: *Cong. Rec.* (daily) Feb. 24, 1948, p. A1134.
- 26 SWITZERLAND—UNITED STATES. The United States paid \$1,056,052 for wartime internment expenses of U. S. fliers who landed in Switzerland. *N. Y. T.*, Jan. 27, 1948, p. 14.
- 26-February 9. MANPOWER CONFERENCE. Countries which participated in the Paris Conference of the Committee on European Economic Coöperation opened a conference in Rome to consider manpower problems relating to the European Recovery Program. *N. Y. T.*, Jan. 27, 1948, p. 12; *London Times*, Jan. 27, 1948, p. 4. U. S. representatives: *D. S. B.*, Feb. 1, 1948, p. 138. Conference ended Feb. 9. Report on the Conference: *London Times*, Feb. 10, 1948, p. 4.

- 28/30 SOVIET RUSSIA—UNITED STATES. Exchanged notes at Washington regarding visits of U. S. naval vessels to Italian ports. *N. Y. T.*, Feb. 3, 1948, p. 1. Texts: *D. S. B.*, Feb. 15, 1948, pp. 218-219.
- 29 ATOMIC BOMB. Russian member of the U. N. Atomic Energy Commission stated at a meeting of the working committee that existing stockpiles of bombs owned by the United States must be destroyed before Russia would agree to setting up the proposed international atomic control authority. *N. Y. T.*, Jan. 30, 1948, p. 12.
- 29-February 1 BELGIUM—LUXEMBOURG—NETHERLANDS. Ministers concerned with foreign affairs, economic affairs, agriculture and re-equipment, held a conference at Luxembourg to develop the customs union into an economic union. *London Times*, Jan. 30, 1948, p. 4. At the close of the conference a statement was issued. *London Times*, Feb. 2, 1948, p. 3.
- 30 GANDHI, MOHANDAS KARAMOHAND. Noted Hindu leader was assassinated in his 79th year. *N. Y. T.*, Jan. 31, 1948, p. 1.
- 30 PALESTINE—UNITED STATES. U. S. Consul General in Jerusalem warned that U. S. citizens serving in Jewish or Arab forces would lose their passports and all protective rights. *N. Y. T.*, Jan. 31, 1948, p. 1.
- 30 PRISONERS OF WAR. U. S. Department of State issued statement concerning release of German prisoners. Text: *D. S. B.*, Feb. 15, 1948, pp. 221-222.
- 30 TYROL. Austrian Minister of Foreign Affairs issued statement that his Government was satisfied that the promises of the Italian Government with respect to South Tyrolean optants for Austrian and Italian citizenship had been kept. *N. Y. T.*, Jan. 31, 1948, p. 5.
- 31 IRAN—SOVIET RUSSIA. Russian note to Iran was delivered, accusing the Government of lending itself to U. S. plans for changing Iran into a "military-strategic base." Excerpts: *London Times*, Feb. 3, 1948, p. 4. Article: *World Today* (London), Mar. 1948, pp. 97-102.
- 31 ITALY—SOVIET RUSSIA. Following Russian protest to United States concerning visits of U. S. naval vessels to Italian ports, the Italian Ambassador to Moscow was instructed to inform the Russian Government that if any complaint were to be made on this subject, Italy should make it. *N. Y. T.*, Feb. 1, 1948, p. 49.
- 31 SOVIET RUSSIA—UNITED STATES. Russian note was delivered, accusing U. S. aircraft of inspecting and circling Soviet merchantmen in the Yellow and Japan Seas. *London Times*, Feb. 4, 1948, p. 3.

UNITED NATIONS AND SPECIALIZED AGENCIES

January, 1947

- 1-September 11 U. N. ATOMIC ENERGY COMMISSION. Commission's interim report for this period was sent Sept. 11 to the Security Council. Text: *A. E. C.* (II) O. R., Special Supplement; U. N. Doc. AEO/26.

- 1-December 31 U. N. Summary of work and achievements for the year. *U. N. B.*, Jan. 1, 1948, pp. 5-14.

July, 1947

- 15-December 31 U. N. ECONOMIC COMMISSION FOR EUROPE. Report for this period was forwarded Jan. 13, 1948 to the Economic and Social Council. Text: U. N. Doc. E/603.

October, 1947

9-January 28, 1948 U. N. ECONOMIC COMMISSION FOR LATIN AMERICA. Ad hoc Committee of the Economic and Social Council held first meeting Oct. 9 at Lake Success. The Committee concluded its work Jan. 28. *N. Y. T.*, Jan. 29, 1948, p. 19. Text of report: U. N. *Doc. E/630*.

November, 1947

1 TRUSTEESHIP. Agreement for Nauru was approved by the U. N. General Assembly. *U. N. W. B.*, Nov. 11, 1947, p. 647; *N. Y. T.*, Nov. 2, 1947, p. 55. Text of agreement: U. N. *Doc. T/Agreement/9*.

1-29 U. N. GENERAL ASSEMBLY. Voted Nov. 1 to urge South Africa to submit a trusteeship agreement for South West Africa. *London Times*, Nov. 8, 1947, p. 3; *N. Y. T.*, Nov. 2, 1947, pp. 1, 55. Approved Italy's and Austria's applications for membership in I. C. A. O., p. 59; *ICAO Monthly Bulletin*, Jan., 1948, p. 8; *U. N. W. B.*, Nov. 11, 1947, p. 619. Approved trusteeship agreement for Nauru, p. 647. Text: U. N. *Doc. T/Agreement/9*. Adopted Nov. 3 resolution condemning war propaganda in any form. *N. Y. T.*, Nov. 4, 1947, p. 1. Text: pp. 1, 18; *U. N. W. B.*, Nov. 11, 1947, p. 618; U. N. *Doc. A/428*. Approved Nov. 13, by a vote of 41-6, the Arab nations abstaining, the resolution for an Interim Committee, or "little Assembly." *U. N. W. B.*, Nov. 25, 1947, p. 695; *N. Y. T.*, Nov. 14, 1947, pp. 1, 11. Text of resolution: U. N. *Doc. A/454*. Elected the Ukraine to the vacancy in the Security Council, and the Philippine Republic and Costa Rica to the Trusteeship Council. *N. Y. T.*, Nov. 14, 1947, p. 11; *U. N. W. B.*, Nov. 25, 1947, p. 681. Voted Nov. 14 to establish a commission to supervise elections and to help establish a provisional government in Korea. Members of the Commission are Ukraine, Australia, Canada, China, El Salvador, France, India, Philippine Republic and Syria. *N. Y. T.*, Nov. 15, 1947, p. 1. Text of resolution: U. N. *Doc. A/447*; *D. S. B.*, Nov. 30, 1947, pp. 1031-1032. Adopted also 3 resolutions concerning the jurisdiction of the International Court of Justice. *N. Y. T.*, Nov. 15, 1947, p. 1. Texts: U. N. *Doc. A/459*. Voted Nov. 15 that the 1948 Assembly be held in Europe. *N. Y. T.*, Nov. 16, 1947, p. 1. Approved agreements with I. B. R. D., I. M. F., W. H. O., U. P. U. and I. T. U. In the case of the first two organizations the U. N. waived any right to make recommendations on loans, p. 12; *U. N. W. B.*, Nov. 25, 1947, p. 716. Adopted resolution asking member governments to combat spread of false information or distorted news which would be likely to disturb friendly relations. *N. Y. T.*, Nov. 16, 1947, p. 13. Text: U. N. *Doc. A/445* and Corr. 1. Declined Nov. 17 to reaffirm its 1946 resolution condemning the Franco regime in Spain, and expressed confidence in the Security Council's ability to deal with the situation. *U. N. W. B.*, Nov. 25, 1947, p. 690; *N. Y. T.*, Nov. 18, 1947, p. 16. Text of resolution: U. N. *Doc. A/479*. Adopted resolution on refugees. Text: U. N. *Doc. A/467*. Resolved to transfer to W. H. O. certain League of Nations assets. *U. N. W. B.*, Nov. 25, 1947, p. 716. Text: U. N. *Doc. A/455*. Adopted resolution endorsing trade union rights laid down by the I. L. O. Adopted resolution favoring admission of Ireland, Portugal, Trans-Jordan, Italy, Finland and Austria, and calling on the Security Council to restudy their applications. *N. Y. T.*, Nov. 18, 1947, p. 26; *U. N. W. B.*, Nov. 25, 1947, p. 685. By a vote of 31-19, with 6 abstentions, the Assembly failed to re-affirm its 1946 resolution censuring South Africa for its alleged treatment of Indians, thus dropping the question entirely. *N. Y. T.*, Nov. 21, 1947, p. 13. Voted Nov. 21 to have a full study made of limitation of the Big Five veto power by the Interim Committee. *N. Y. T.*, Nov. 22, 1947, pp. 1, 6. Text of resolution: U. N. *Doc. A/501*. Adopted resolution regarding the

development, codification and teaching of international law. Text: U. N. Doc. A/509. Noted that a proposal to revise the Italian peace treaty had been withdrawn. *N. Y. T.*, Nov. 22, 1947, p. 3. Adopted new admission rules. Text: U. N. Doc. A/502. Short summary: *N. Y. T.*, Nov. 22, 1947, p. 6. Adopted 3 resolutions concerning the establishment of an International Law Commission, elections for which will not occur for one year. Its task would be to prepare a declaration on the rights and duties of states and to prepare a "code of crimes against the peace and security of mankind, embracing the principles set forth in the Charter and judgment of the Nuremberg tribunal." *N. Y. T.*, Nov. 22, 1947, p. 6. Texts of resolutions: U. N. Docs. A/504, A/505, A/508. Session adjourned the 29th, after approving 33-13, with 10 abstentions, the proposal to partition Palestine into two states. *London Times*, Dec. 1, 1947, p. 4; *N. Y. T.*, Nov. 30, 1947, p. 1. Text of resolution on partition: U. N. Doc. A/516. Summary of major decisions: *N. Y. T.*, Nov. 30, 1947, p. 62. Report on the session: U. N. W. B., Dec. 9, 1947, pp. 759-767, 782-789. Preliminary survey of Assembly's action: *D. S. B.*, Dec. 7, 1947, pp. 1153-1160. Bodies established during the session: p. 1161. Summary of resolutions adopted: pp. 1161-1171. Round-up of the session, including texts of resolutions: U. N. Press Release GA/237. Check list of reports to the session: U. N. Doc. A/INF/14. Disposition of agenda items: U. N. Doc. A/INF/15 and Corr. 1.

- 1/December 30 U. N. SECURITY COUNCIL (Indonesian Question). Council adopted a resolution urging cessation of hostilities and negotiations for peace. *London Times*, Nov. 3, 1947, p. 3; *U. N. W. B.*, Nov. 11, 1947, p. 615. Text of resolution: *N. Y. T.*, Nov. 2, 1947, p. 59; U. N. Doc. S/597. On Dec. 30 the Council deferred discussion of the question until the full report of the Good Offices Committee should be received. *N. Y. T.*, Dec. 31, 1947, p. 9.
- 3 I. R. O. Preparatory Commission announced the first payment of the equivalent of \$367,000 to voluntary relief organizations under terms of Allied reparations agreements. These funds are part of an allotment from the Swedish Government for the resettlement of victims of Nazi persecution. *N. Y. T.*, Nov. 4, 1947, p. 3.
- 4-14 F. A. O. Council of F. A. O. held session in Washington. *U. N. W. B.*, Nov. 18, 1947, p. 666. Voted Nov. 7 to take over the allocation machinery of the International Emergency Food Council. *N. Y. T.*, Nov. 8, 1947, p. 4. Summary of the session: *D. S. B.*, Dec. 14, 1947, pp. 1181-1182; *FAO Information Service Bulletin*, Dec. 29, 1947, pp. 1-7.
- 6-December 3 U. N. E. S. C. O. Second session of the general conference opened Nov. 6 at Mexico City. *N. Y. T.*, Nov. 7, 1947, p. 9. U. S. delegates: *D. S. B.*, Nov. 9, 1947, pp. 900-901. Elected Manuel Gual Vidal of Mexico as president of the conference. *U. N. W. B.*, Nov. 18, 1947, pp. 657-658. On Nov. 7 elected Italy, Switzerland, Austria and Hungary to membership, p. 658; *N. Y. T.*, Nov. 8, 1947, p. 6. Adopted Nov. 29 a resolution against war mongering: *N. Y. T.*, Nov. 30, 1947, p. 56. At closing session on Dec. 3 adopted a budget of \$8,000,000 for 1948. *N. Y. T.*, Dec. 4, 1947, p. 10; *U. N. W. B.*, Dec. 9, 1947, p. 790. Outline of allocation of budget items: *N. Y. T.*, Dec. 2, 1947, p. 10. The 1948 meeting will be held in Nov. 1948 at Beirut, Lebanon. *N. Y. T.*, Nov. 28, 1947, p. 12; *U. N. W. B.*, Dec. 9, 1947, p. 758.
- 15 U. N.—I. B. R. D. U. N. General Assembly approved agreement bringing the Bank into relationship. *U. N. W. B.*, Nov. 25, 1947, p. 716. Text of agreement: U. N. Doc. A/849.

- 15 U. N.—I. M. F. U. N. General Assembly approved agreement bringing the Fund into relationship. *U. N. W. B.*, Nov. 25, 1947, p. 716. Text of agreement: *U. N. Doc. A/349*.
- 15 U. N.—I. T. U. U. N. General Assembly approved agreement bringing the Union into relationship. *U. N. W. B.*, Nov. 25, 1947, p. 716. Text of agreement: *U. N. Doc. A/370* and Add. 1.
- 15 U. N.—U. P. U. U. N. General Assembly approved the agreement bringing the Union into relationship. *U. N. W. B.*, Nov. 25, 1947, p. 716. Text of agreement: *U. N. Doc. A/347*.
- 15 U. N.—W. H. O. U. N. General Assembly approved agreement bringing the W. H. O. into relationship. *U. N. W. B.*, Nov. 25, 1947, p. 716. Text of agreement: *U. N. Doc. A/348*.
- 15-December 12 U. N. SECURITY COUNCIL. Referred on Nov. 15 to its Committee of Experts the formulation of procedure for coöperation with the Trusteeship Council concerning the agreement for former Japanese-mandated Pacific islands. *U. N. W. B.*, Nov. 25, 1947, p. 682. In compliance with the General Assembly's request of Nov. 17 the Council reconsidered on Nov. 22 the membership applications of Italy and Trans-Jordan and again rejected them. *U. N. W. B.*, Dec. 2, 1947, p. 724. On Dec. 12 the Committee of Experts informed the Council it had been unable to complete its work in the specified time. Text: *U. N. Doc. S/621*.
- 20-December 16 U. N. TRUSTEESHIP COUNCIL. Second session opened Nov. 20 at Lake Success under the chairmanship of Francis B. Sayre. *N. Y. T.*, Nov. 21, 1947, p. 13; *U. N. W. B.*, Dec. 2, 1947, p. 728. Agenda: *U. N. W. B.*, Nov. 25, 1947, pp. 687-689. Costa Rica and the Philippine Republic were elected to membership Nov. 13 by the General Assembly, p. 688; *N. Y. T.*, Nov. 14, 1947, p. 11. Decided Dec. 1 to examine a report by the Union of South Africa on its mandate of South West Africa as if the Council were the Mandates Commission of the League of Nations. Other decisions: *N. Y. T.*, Dec. 2, 1947, p. 9. Named on Dec. 2 a 6-nation working committee to make plans for the government of Jerusalem as an international city. *U. N. W. B.*, Dec. 16, 1947, pp. 798-799; *N. Y. T.*, Dec. 3, 1947, p. 7. Approved on the 5th a resolution calling for greater self-government for Western Samoa. *N. Y. T.*, Dec. 6, 1947, p. 3; *U. N. W. B.*, Dec. 16, 1947, pp. 795-797. Turned down on Dec. 11 three petitions from the Women's International League for Peace and Freedom that the United Nations take over control of the Arctic and Antarctic regions. *N. Y. T.*, Dec. 12, 1947, p. 14. Adopted Dec. 12 a resolution concerning the report on South West Africa for 1946. Text: *U. N. Doc. T/112*. Recessed Dec. 16 until Feb. 1948. *U. N. B.*, Jan. 1, 1948, p. 2. Summary of action: *U. N. Press Release TR/130*.
- 21 U. N.—UNITED STATES. The headquarters agreement came into force by a formal exchange of notes. *U. N. W. B.*, Dec. 2, 1947, p. 718. Summary of provisions: *N. Y. T.*, Nov. 22, 1947, p. 6. Texts: *D. S. B.*, Dec. 14, 1947, pp. 1080-1081.
- 21-January 10, 1948 U. N. BALKAN COMMITTEE. Special Balkan Committee, established by resolution of Oct. 21, 1947, began work Nov. 21 at Salonika. *D. S. B.*, Jan. 4, 1948, p. 25. Members: *U. N. W. B.*, Dec. 9, 1947, p. 781. Adopted resolution Nov. 27 asking the Secretary-General to seek consent of Albania, Bulgaria, Greece and Yugoslavia for the Committee to maintain observation posts "near and on both sides" of the Greek frontier. Adopted rules of procedure, with decisions to be made by simple majority. *N. Y. T.*, Nov.

- 28, 1947, p. 12; *London Times*, Nov. 28, 1947, p. 3. Yugoslav semi-official news agency announced Nov. 28 that Bulgaria and Yugoslavia had agreed to bar the Committee. *N. Y. T.*, Nov. 29, 1947, p. 6. On Dec. 8 Yugoslavia notified the United Nations of its boycott of an inquiry committee. Adopted Interim Report on Dec. 31. Text: *U. N. Doc. A/521* and Corr. 1. Second interim report was adopted Jan. 10. It accused Albania of supporting guerrillas against Greece. Text: *U. N. Doc. A/522*.
- 24-29 I. L. O. Regional meeting was held at Istanbul, Turkey. Representatives of Turkey, Egypt, Iran, Iraq, Syria and Lebanon drew up a set of directives regarding objectives in agriculture and industry. Short report on the conference: *N. Y. T.*, Nov. 30, 1947, p. 57; *U. N. W. B.*, Dec. 2, 1947, p. 718. Report on the meeting: *D. S. B.*, Feb. 1, 1948, pp. 139-143.
- 24-December 6 U. N. ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST. Held 2d session at Baguio, Philippine Republic, with representatives present from 11 Asiatic nations, and observers from western Powers. *N. Y. T.*, Nov. 25, 1947, p. 20. Agenda: *U. N. Doc. E/CN.11/34 Rev./2*. Voted to recommend to the Economic and Social Council full membership for New Zealand. *U. N. W. B.*, Dec. 2, 1947, p. 730. Pending the Council's action it also voted that New Zealand be invited to send an observer to attend the current session. *U. N. Doc. E/CN.11/46*. Siamese delegates withdrew Nov. 27 while the conference argued recognition of the new Siamese regime. Admission of the delegates was voted. *N. Y. T.*, Nov. 28, 1947, p. 3. Approved Dec. 2 the resolution establishing working relations with Allied control authorities in both Japan and Korea. *N. Y. T.*, Dec. 3, 1947, p. 7. Adjourned Dec. 6 after voting to hold its next session in India before May 15, 1948. *N. Y. T.*, Dec. 7, 1947, p. 42. Summary of accomplishments: *U. N. W. B.*, Dec. 16, 1947, p. 816. Text of report of the 1st and 2d sessions: *U. N. Doc. E/606*.
- December, 1947
- 2-17 U. N. HUMAN RIGHTS COMMISSION. Held 2d session at Geneva. Provisional agenda: *U. N. Doc. E/ON.4/22/Rev. 2*. Drafted an international declaration and an international covenant on human rights. Text of report of the session: *E. S. C. O. E.*, 3d yr., 6th sess., Supplement No. 1; *U. N. Doc. E/600*.
- 3-January 17, 1948 U. N. INDONESIAN COMMITTEE. Submitted a plan for truce to special committees of the Netherlands and Indonesian Republic on Dec. 3. Summary: *U. N. B.*, Jan. 15, 1948, p. 57. Dutch and Indonesian representatives began direct negotiations Dec. 8 on board a U. S. Navy transport at Batavia. *N. Y. T.*, Dec. 9, 1947, p. 21; *London Times*, Dec. 9, 1947, p. 3. Both parties signed a truce Jan. 17 at Batavia, to become effective Jan. 31 midnight. *U. N. B.*, Feb. 1, 1948, p. 83; *N. Y. T.*, Jan. 18, 1948, pp. 1, 23; *London Times*, Jan. 19, 1948, p. 4. In addition to the truce twelve principles and 6 additional principles, in connection with political settlements were signed. *U. N. B.*, Feb. 1, 1948, p. 115. Text of 1st Interim Report including truce and principles: *U. N. Doc. S/649* and Corr. 1. Article, including text of Linggradjati agreement of Mar. 24, 1947, and truce: *D. S. B.*, Mar. 14, 1948, pp. 323-336.
- 9 U. N. SECURITY COUNCIL (Palestine Question). The Council voted to postpone indefinitely further discussion on the Palestine partition plan. *N. Y. T.*, Dec. 10, 1947, p. 21; *U. N. W. B.*, Dec. 16, 1947, p. 793.
- 10 I. C. A. O.—PAKISTAN. Pakistan will become a member having completed necessary formalities. *U. N. W. B.*, Dec. 2, 1947, p. 718.

- 18 U. N.—UNITED STATES. Signed agreement, effective immediately, granting to interim headquarters the same diplomatic privileges and immunities that the permanent site carries. *N. Y. T.*, Dec. 19, 1947, p. 16.
- 18-January 23, 1948 U. N. SECURITY COUNCIL (Trieste). The Council asked Italy and Yugoslavia Dec. 18 to name a candidate for Governor of the free city, and to report to the Council by Jan. 5. *N. Y. T.*, Dec. 19, 1947, p. 17. By Jan. 5 no agreement was reached. *C. I. B. D.*, Dec. 22, 1947/Jan. 9, 1948, p. 15. Texts of letters from Italian observer to the United Nations, addressed to Secretary-General Lie and letter from Yugoslav observer: *U. N. Docs. S/644, S/647, and S/648*. At a private meeting of the Security Council, held Jan. 23, it was decided to ask the five permanent members of the Council to hold further consultations on the choice of a Governor. *U. N. B.*, Feb. 15, 1948, p. 124.
- 19 U. N. E. S. O. O.—F. A. O. Director-General of F. A. O. forwarded to Secretary-General Lie text of a draft agreement between the two organizations, which was approved at the 4th session of F. A. O. in Nov. 1947. Text: *U. N. Doc. E/604*.
- 22-January 12, 1948 U. N.—UNITED STATES. Secretary-General Lie reminded the United States on Dec. 22 that it had violated its agreement with the U. N. by arresting, without consulting the Secretary General, two correspondents accredited to the U. N. *N. Y. T.*, Dec. 23, 1947, pp. 1, 10. Text of U. S. statement released the 24th: *D. S. B.*, Jan. 4, 1948, p. 20. On Dec. 30 Standing Committee of U. N. correspondents adopted unanimously a resolution condemning arrest by U. S. authorities. *N. Y. T.*, Dec. 31, 1947, p. 7. Text of resolution: p. 7. United States agreed to lift its ban on the correspondents. *N. Y. T.*, Jan. 1, 1948, p. 24. Text of U. S. communication released Dec. 31: *D. S. B.*, Jan. 11, 1948, pp. 48-49. Reached informal agreement Jan. 12 on accrediting. *N. Y. T.*, Jan. 13, 1948, p. 7. Articles: *U. N. B.*, Jan. 15, 1948, p. 65; Feb. 1, 1948, pp. 103-104.

January, 1948

- 1 I. E. F. O. Transferred its functions and responsibilities to the Council of F. A. O. The IEFEC Central Committee will become the International Emergency Food Committee. Member nations: *U. N. B.*, Jan. 15, 1948, p. 46.
- 1 U. N. SECURITY COUNCIL. Members for the year 1948 are as follows: United States, Great Britain, France, China, U. S. S. R., Argentina, Canada, Ukraine, Belgium, Colombia and Syria. *U. N. B.*, Jan. 15, 1948, p. 55.
- 1-25 U. N. SECURITY COUNCIL (India-Pakistan Question). India informed the United Nations Jan. 1 that troops might be sent to Pakistan unless that Dominion stopped aiding Moslem raiders in Kashmir. *N. Y. T.*, Jan. 3, 1948, p. 1. Text of letter: *U. N. Doc. S/628*; India Information Services [*Press Release*] (Washington) No. 3607. Summary: *U. N. B.*, Jan. 15, 1948, pp. 50-51. The Council agreed the 6th to take up India's complaint. *N. Y. T.*, Jan. 7, 1948, p. 8; *U. N. B.*, Jan. 15, 1948, p. 45. On the 16th Pakistan called on the Council to stop Indian "aggression" and to create a commission to investigate and verify Pakistan's charges. *N. Y. T.*, Jan. 17, 1948, pp. 1, 5; *London Times*, Jan. 17, 1948, p. 4. Summaries of Indian-Pakistani statements of Jan. 15-17: *U. N. B.*, Feb. 1, 1948, pp. 88-91. On the 17th the Council called on the two countries to take measures to end fighting in Kashmir and to ask their peoples to respect the Council's request for a truce. Text of resolution: *N. Y. T.*, Jan. 18, 1948, p. 1; *U. N. B.*, Feb. 1, 1948, p. 86; *D. S. B.*, Feb. 1, 1948, p. 143; *U. N. Doc. S/651*. On Jan. 19 India and Pakistan agreed to submit their quarrels to a

- 3-member mediation and investigation board of the United Nations (decision was reached in a closed meeting). *N. Y. T.*, Jan. 20, 1948, p. 1. Voted Jan. 20 (9-0) to establish a 3-nation commission and instructed it to go to Kashmir in an attempt to mediate. *London Times*, Jan. 21, 1948, p. 3. Text of resolution: *N. Y. T.*, Jan. 21, 1948, p. 4; *U. N. B.*, Feb. 1, 1948, p. 87; *U. N. Doc. S/654*. Indian representative, M. C. Setalvad, presented a further statement on Jan. 23. *N. Y. T.*, Jan. 24, 1948, p. 6. Summary: *U. N. B.*, Feb. 15, 1948, pp. 187-138. Pakistan's reply was presented Jan. 24. Summary: pp. 158-159. On Jan. 25 the Council invited the two countries to resume direct negotiations. *London Times*, Jan. 26, 1948, p. 3.
- 5-19 U. N. STATUS OF WOMEN COMMISSION. Met at Lake Success. Elected Mme Lefaucheux of France as chairman. *N. Y. T.*, Jan. 6, 1948, p. 11. Provisional agenda: *U. N. Doc. E/ON.6/22/Rev. 1*. Session ended Jan. 19 with issuance of recommendations for the advancement of women in all fields. *N. Y. T.*, Jan. 20, 1948, p. 4; *U. N. B.*, Feb. 1, 1948, p. 94. Text of report: *U. N. Doc. E/615*.
- 5-28 U. N. GENERAL ASSEMBLY. INTERIM COMMITTEE. With 6 members of the Soviet bloc absent, the Interim Committee opened its session Jan. 5 at Lake Success. Elected Dr. Padilla Nervo of Mexico as chairman and M. Van Langenhove of Belgium as vice chairman. *N. Y. T.*, Jan. 6, 1948, p. 1; *London Times*, Jan. 6, 1948, p. 3; *U. N. B.*, Jan. 15, 1948, p. 45. Philip C. Jessup was appointed Jan. 3 as deputy to Warren R. Austin. *N. Y. T.*, Jan. 4, 1948, p. 16; *D. S. B.*, Jan. 11, 1948, p. 47. List of U. N. documents referring to the Committee: *U. N. Doc. A/AC.18/1*. Adopted rules of procedure Jan. 9. Text: *U. N. Doc. A/AC.18/8*. Adopted Jan. 9 the U. S. resolution giving members until Mar. 15 to present suggestions on modifications in the use of the veto. *N. Y. T.*, Jan. 10, 1948, pp. 1, 4. Text: *U. N. Doc. A/AC.18/11*; *D. S. B.*, Jan. 18, 1948, p. 86. Lebanon proposed Jan. 28 that a 9-man permanent committee of conciliation be created to consider all disputes between governments. The committee would be a subsidiary of the General Assembly. *N. Y. T.*, Jan. 29, 1948, p. 17.
- 7 U. N. AND SPECIALIZED AGENCIES. Members of the U. N. and the Specialized Agencies as of this date: *U. N. B.*, Jan. 15, 1947, pp. 62-63.
- 8 F. A. O. Director-General sent Supplementary Report to the U. N. Secretary-General. Text: *U. N. Doc. E/597/Add. 1*.
- 9 I. C. E. F. Executive Board of the I. C. E. F. revised its rules of procedure. Text as adopted Feb. 24, 1947 and now revised: *U. N. Doc. E/IOEF/8/Rev. 2*.
- 9-29 U. N. PALESTINE COMMISSION. Comprised of representatives of Czechoslovakia, Panama, Bolivia, Denmark and Philippine Republic. *N. Y. T.*, Dec. 2, 1947, p. 15. Members: *N. Y. T.*, Dec. 25, 1947, p. 5. Held opening meeting Jan. 9 at Lake Success. *U. N. B.*, Jan. 15, 1948, p. 45; *N. Y. T.*, Jan. 10, 1948, p. 4. Elected Karel Lisicky (Czechoslovakia) as chairman. *U. N. Press Release PAL/101*. Began Jan. 10 a preliminary survey of the work involved in the recommended partition. Most of the meetings will be held in executive session. *N. Y. T.*, Jan. 11, 1948, p. 5. At a closed meeting on Jan. 14 Great Britain's withdrawal plans were presented by Sir Alexander Cadogan. *N. Y. T.*, Jan. 15, 1948, p. 6. Took up the study of armed militia the 16th. *N. Y. T.*, Jan. 17, 1948, p. 4. Arab Higher Committee sent note Jan. 19 to the Secretary General declining the Commission's invitations to appoint representatives to assist the Commission. *London Times*, Jan. 20, 1948, p. 3. Decided Jan. 29 to accept offer of the Jewish Agency to cooperate in the estab-

lishment of a Jewish militia in Palestine. *N. Y. T.*, Jan. 30, 1948, p. 1. Text of first monthly report to the Security Council: *U. N. Docs. S/663 and A/AC.21/7*.

- 12-February 7 *U. N. KOREAN COMMISSION*. Began operations at Seoul by electing K. P. S. Menon of India as chairman. *N. Y. T.*, Jan. 13, 1948, p. 2; *U. N. B.*, Feb. 1, 1948, p. 81. Members: *U. N. Press Release KOR/11*. On Jan. 17 the Commission set up 2 subcommittees to "consider ways and means to insure a free atmosphere for the elections," to examine any documents already received or which may be received from Korean sources, and to secure statements from Korean personalities whose views may be helpful to the Commission. *N. Y. T.*, Jan. 18, 1948, p. 24. Chairman stated Jan. 21 in a radio address that in the eyes of the Commission Korea is one and indivisible. *N. Y. T.*, Jan. 22, 1948, p. 12. On the 23d Mr. Gromyko notified the United Nations that Russia maintained its "negative attitude" toward the Commission—which was interpreted as a refusal to allow the Commission to enter the Soviet zone in northern Korea. *N. Y. T.*, Jan. 24, 1948, p. 7; *C. I. E. D.*, Jan. 11/23, 1948, p. 72. Text of the 1st and 2d Information Reports on the work of the Commission covering the period Jan. 12-Feb. 7, 1948: *U. N. Docs. A/523 and A/525*.
- 20/23 *U. N.*—Veto. Dr. Arce of Argentina pointed out to the Security Council on Jan. 23 that its resolution of the 20th establishing a commission in the India-Pakistan question did not obtain the favorable vote of all five permanent members. He claimed that Russia's abstention constituted a veto although the resolution had been considered as adopted. *U. N. B.*, Feb. 15, 1948, p. 135.
- 20-31 *I. R. O.* Fifth part of 1st session of the Preparatory Commission opened Jan. 20 at Geneva. *London Times*, Jan. 21, 1948, p. 3. *U. S.* delegates: *D. S. B.*, Jan. 11, 1948, p. 49, 63. Adopted Jan. 26 a proposal for setting up a special fund for large-scale resettlement. *London Times*, Jan. 27, 1948, p. 3. Adopted a recommendation that refugees, leaving their countries of origin or habitual residence after Feb. 1st, should not be eligible for international aid. *N. Y. T.*, Jan. 31, 1948, p. 4. Session ended Jan. 31. The Preparatory Commission will meet May 4, unless the necessary additional two states have ratified the constitution, which would allow the Council of *I. R. O.* to assemble. *N. Y. T.*, Feb. 1, 1948, p. 48. Report on the session: *U. N. B.*, Feb. 15, 1948, pp. 129-130; *I. R. O. Monthly Digest*, No. 5, Feb. 1948 (PC/PI/MD/5), pp. 13-20. Text of report: *I. R. O. Doc. PREP/195/Rev. 1*. List of documents issued during the session: *I. R. O. Doc. PREP/199*.
- 22-February 7 *W. H. O.* Fifth session of the Interim Commission was held at Geneva. *N. Y. T.*, Jan. 23, 1948, p. 12; *London Times*, Jan. 23, 1948, p. 3; *U. N. B.*, Feb. 1, 1948, p. 116. *U. S.* delegation: *D. S. B.*, Jan. 4, 1948, p. 23. At final meeting Dr. Stampar of Yugoslavia announced that 29 nations had ratified the Charter and the World Health Organization came into existence Feb. 7. The 1st Assembly will open at Geneva on June 24. A \$6,000,000 budget was adopted. *N. Y. T.*, Feb. 8, 1948, p. 44. Summary of program of action: *U. N. B.*, Mar. 1, 1948, pp. 197-198.
- 28 *U. N. APPEAL FOR CHILDREN*. Special Committee issued a report. Text: *U. N. Doc. E/629 and Corr. 1*.

MULTIPARTITE AGREEMENTS

- AVIATION CONVENTION. [*I. C. A. O. Constitution*.] Chicago, Dec. 7, 1944.
 Ratification deposited:
 Pakistan. Nov. 10, 1947. *U. S. Aviation Reports*, Oct. 1947, p. 443.

AVIATION CONVENTION. [I. C. A. O. Constitution.] Chicago, Dec. 7, 1944. Protocol of Amendment. Montreal, May 27, 1947.

Ratification deposited:

Canada. Aug. 27, 1947.

Text: Canada *Treaty Ser.* 1947, No. 22.

FOOD AND AGRICULTURE. Constitution. Quebec, Oct. 16, 1945.

Signatures:

El Salvador. Jan. 16, 1948. *U. N. B.*, Feb. 1, 1948, p. 116.

Ethiopia. Jan. 6, 1948. *FAO Information Service Bulletin*, Jan. 28, 1948, p. 2.

GERMAN GOLD. London, Nov. 4, 1947.

Signatures:

United States, Great Britain, France, Austria.

Text: *D. S. B.*, Nov. 16, 1947, p. 959.

GERMAN GOLD. London, Dec. 16, 1947.

Signatures:

United States, Great Britain, France, Italy. *D. S. B.*, Dec. 28, 1947, p. 1269.

GERMAN PROPERTY. Brussels, Dec. 5, 1947.

Signatures:

Canada, Netherlands, United States. *D. S. B.*, Dec. 14, 1947, pp. 1192-1193.

Belgium. Jan. 5, 1948. *D. S. B.*, Jan. 18, 1948, p. 93.

Text: *D. S. B.*, Jan. 4, 1948, pp. 6-18.

HEALTH ORGANIZATION. Constitution. New York, July 22, 1946.

Ratifications:

Bulgaria. *U. N. Press Release H/170*.

Egypt. Dec. 19, 1947. *U. N. B.*, Jan. 15, 1948, p. 80.

Finland. *W. H. O. Chronicle*, Nov. 1947, p. 172.

India. Jan. 14, 1948. *U. N. B.*, Feb. 1, 1948, p. 116.

Turkey. Jan. 5, 1948. *U. N. B.*, Jan. 15, 1948, p. 80.

INTER-AMERICAN COFFEE MARKETING AGREEMENT. Protocol. Washington, Sept. 11, 1947.

Signatures and Text:

Cong. Rec. (daily), Jan. 21, 1948, pp. 414-415.

This Protocol extends the Agreement of Nov. 28, 1946, for one year from Oct. 1, 1947, and renders inoperative all quota restrictions in the Agreement.

INTER-AMERICAN RECIPROCAL ASSISTANCE. Rio de Janeiro, Sept. 2, 1947.

Ratifications deposited:

Dominican Republic. Nov. 21, 1947. *P. A. U. Press Release* of Nov. 21, 1947.

United States. Dec. 30, 1947. *N. Y. T.*, Dec. 31, 1947, p. 6; *D. S. B.*, Jan. 11, 1948, pp. 60-61.

INTER-AMERICAN TELECOMMUNICATIONS. Rio de Janeiro, Sept. 27, 1945.

Signatures (22) and Text: Canada *Treaty Series*, 1947, No. 29.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT. Washington, Dec. 27, 1945.

Signature:

Finland. Jan. 14, 1948. *U. N. Press Release IB/40*.

INTERNATIONAL MONETARY FUND. Washington, Dec. 27, 1945.

Signature:

Finland. Jan. 14, 1948. *U. N. Press Release IB/40*.

PACIFIC COMMISSION. Canberra, Feb. 6, 1947.

Acceptance:

United States. Jan. 28, 1948. *D. S. B.*, Feb. 15, 1948, pp. 214-215.

PAYMENTS. Paris, Nov. 18, 1947.

Signatures:

France, Italy, Belgium, Netherlands and Luxembourg. *N. Y. T.*, Nov. 20, 1947, p. 20.

PEACE TREATY (Italian). Paris, Feb. 10, 1947.

Ratification:

Poland. *N. Y. T.*, Nov. 17, 1947, p. 10.

Text below, Supplement, p. 47;

PEACE TREATY (Italian). Protocol. Paris, Feb. 10, 1947.

Signatures:

France, Great Britain, Soviet Russia, United States.

Text below, Supplement, p. 139; *G. B. M. S.* No. 5 (1947), *Cmd.* 7078; *D. S. B.*, May 4, 1947, pp. 815-816.

PEACE TREATY (Italian). Protocol (Annex) Paris, Feb. 10, 1947.

Signatures:

France, Great Britain, Soviet Russia, United States.

Text below, Supplement, p. 141; *G. B. M. S.* No. 1 (1948), *Cmd.* 7323.

PRIVILEGES AND IMMUNITIES, UNITED NATIONS. London, Feb. 13, 1946.

Adherences as of Nov. 18, 1947: *U. N. Press Release L/37*.

TRADE AND TARIFFS. General Agreement. Geneva, Oct. 30, 1947.

Status as of Jan. 1, 1948: *D. S. B.*, Jan. 25, 1948, pp. 120-121.

Entered into force Jan. 1, 1948. *D. S. B.*, Feb. 22, 1948, p. 250.

Promulgation (provisional):

United States. Dec. 16, 1947.

Proclamation supplementing provisional promulgation:

United States. Jan. 30, 1948. *D. S. B.*, Feb. 22, 1948, p. 250.

TRADE AND TARIFFS. Protocol. Geneva, Oct. 30, 1947.

Signatures:

Australia and France. Nov. 13, 1947. *N. Y. T.*, Nov. 14, 1947, p. 14; *U. N. W. B.*, Nov. 25, 1947, p. 682.

Cuba. Dec. 17, 1947. *D. S. B.*, Jan. 4, 1948, p. 28.

DOROTHY R. DART

JUDICIAL DECISIONS

DIGESTS*

By WILLIAM W. BISHOP, JR.

Of the Board of Editors

War—enemy property—U. S. controls—interests of neutrals.

CLARK v. UEBERSEE FINANZ-KORPORATION, A. G. 68 Sup. Ct. 174.
United States Supreme Court, Dec. 8, 1947. Douglas, J.

A Swiss corporation, alleging that it had not been at any time owned or controlled by an enemy or ally of enemy or national of a designated enemy country nor done business in an enemy country, brought an action against the Alien Property Custodian to recover property (shares of stock in American corporations and an interest in a contract between two such corporations) which had been vested by defendant. The complaint also alleged that none of the property involved was owned by or held for any enemy or ally of enemy. The action was brought under section 9(a) of the Trading With the Enemy Act, permitting "Any person not an enemy or ally of enemy" claiming any property or right in property seized or held by the Alien Property Custodian to claim it from the Custodian, and if the Custodian does not pay or convey it to claimant, to sue in equity "to establish the interest, right, title, or debt so claimed."

The District Court granted defendant's motion to dismiss which was based solely on the fact that the plaintiff was a national of a foreign country. The United States Court of Appeals for the District of Columbia reversed this decision, holding in favor of plaintiff (respondent), 158 F. (2d) 313. The Custodian, for whom the Attorney General was substituted, petitioned for certiorari. The Supreme Court affirmed the decision of the Court of Appeals in favor of the respondent Swiss corporation. The Court said, in part:

"Under the Act as it read prior to the 1941 amendment respondent would have been able to maintain this suit on a showing, without more, that it was a corporation organized under the laws of a friendly nation and not

* The following materials are arranged in order of Courts, with the United States Supreme Court first, then United States Circuit Courts of Appeals, United States District Courts, other Federal courts, and then the State courts arranged alphabetically by State names. Within each group the entries are arranged chronologically. The entries give the name of the case, its citation, the name of the court, date of the judgment, and name of the judge writing the opinion. The items are prefaced by a "catch line" of a few words indicating the general branch of international law with which each deals.

doing business in the territory of an enemy nation or any of its allies. That result would be reached as follows: Sec. 7(c) permitted seizure by the Custodian only of property in which an enemy or ally of an enemy had an interest. Sec. 9(a) permitted 'any person not an enemy or ally of enemy' claiming an interest in any seized property to sue to reclaim it. And the Court held in *Behn, Meyer & Co. v. Miller*, 266 U. S. 457 . . ., that a corporation organized under the laws of a friendly nation and not doing business in the territory of an enemy nation or any of its allies could maintain such a suit even though the corporation was enemy owned or controlled. The scheme of the Act as it was then drawn was 'to seize the shares of stock when enemy owned rather than to take over the corporate property.' *Hamburg-American Line Terminal and Navigation Co. v. United States*, 277 U. S. 138, 140. . . .

"That was at least one respect in which the Act had a 'rigidity and inflexibility' that was sought to be cured by the amendment to § 5(b) in 1941. See H. R. Rep. No. 1507, 77th Cong., 1st Sess., p. 3. It was notorious that Germany and her allies had developed numerous techniques for concealing enemy ownership or control of property which was ostensibly friendly or neutral. They had through numerous devices, including the corporation, acquired indirect control or ownership in industries in this country for the purposes of economic warfare. Sec. 5(b) was amended on the heels of the declaration of war to cope with that problem. Congress by that amendment granted the President the power to vest in an agency designated by him 'any property or interest of any foreign country or national thereof.' The property of all foreign interests was placed within reach of the vesting power not to appropriate friendly or neutral assets but to reach enemy interests which masqueraded under these innocent fronts. . . .

"While the scope of the President's power was broadened, there was no amendment restricting the scope of § 9(a). . . . Yet, as petitioner suggests, if *Behn, Meyer & Co. v. Miller*, *supra*, is applied despite the 1941 amendment, § 9(a) will undo much of the good which the 1941 amendment to § 5(b) was designed to accomplish. All a corporate claimant would need to do to recover the property seized would be to show that it was organized in this country or in some friendly or neutral country and was not doing business within the territory of an enemy or any of its allies. The fact that it was owned or controlled by enemy interests and might sap the strength of this nation through economic warfare would be immaterial. We agree that a construction so destructive of the objectives of the 1941 amendment to § 5(b) must be rejected.

"Petitioner therefore suggests that once the seizure is shown to be permissible under § 5(b), there is no remedy for the return of the property under § 9(a). It is said that § 9(a) was designed to provide an ultimate judicial determination of the question whether the property seized was

within the vesting power defined in § 5(b). *Central Union Trust Co. of New York v. Garvan*, 254 U. S. 554. . . . The argument accordingly is that since § 5(b) allows seizure and vesting of 'any property or interest of any foreign country or national thereof,' a suit to reclaim it is defeated by a mere showing that the claimant is a corporation organized under the laws of another nation.

"That is to make the right to sue run not to 'any person not an enemy or ally of enemy' as § 9(a) in terms provides but to 'any person not an enemy or ally of enemy or national of any foreign country.' That would wipe out all suits to reclaim property brought by any foreign interest, no matter how friendly. We stated in *Markham v. Cabell*, 326 U. S. 404, 410, 411 . . . , 'The right to sue, explicitly granted by § 9(a), should not be read out of the law unless it is clear that Congress by what it later did withdrew its earlier permission.' Such a drastic contraction, if not complete sterilization, of § 9(a) as petitioner suggests should therefore be made only if no other alternative is open.

"There are several reasons which make us hesitate to take that course. In the first place, as we have suggested, the phase of the problem with which we are presently concerned and with which Congress was wrestling when it amended the Act in 1941 started and ended with property having an enemy taint. We find not the slightest suggestion that Congress was concerned under this Act with property owned or controlled by friendly or neutral powers and in no way utilized by the Axis. Those interests were not waging economic warfare against us. Secondly, we are dealing here with the power 'to affirmatively compel the use and application of foreign property in a manner consistent with the interests of the United States.' Sen. Rep. No. 911, 77th Cong., 1st Sess., p. 2. It is hard for us to assume that Congress adopted that drastic course in the case of friendly or neutral foreign interests whose investments in our economy were in no way infected with enemy ownership or control. Our hesitation is, moreover, increased when we note that § 7(c) makes the remedy under the Act the only one Congress has granted a claimant. It is not easy for us to assume that Congress treated all non-enemy nations, including our recent allies, in such a harsh manner, leaving them only with such remedy as they might have under the Fifth Amendment.

"The problem is not without its difficulties whichever way we turn. But we think that we adhere more closely to the policy of both § 5(b) as amended and § 9(a), if we do not carry over into the amended Act the consequences of *Behn, Meyer & Co. v. Miller*, supra.

" . . . The 1941 amendment to § 5(b) reflected a complete reversal in that policy. The power of seizure and vesting was extended to all property of any foreign country or national so that no innocent appearing device could become a Trojan horse. Congress did not, however, alter the defi-

nitions of enemy or of ally of enemy contained in § 2. They remain the same as they were at the time *Behn, Meyer & Co. v. Miller* was decided.

"Yet if the question were presented for the first time under the amended Act, we could not confine the statutory definitions of enemy or ally of enemy to the narrow categories indicated by *Behn, Meyer & Co. v. Miller*. To do so would be to run counter to the policy of the Act and be disruptive of its purpose. We are dealing with hasty legislation which Congress did not stop to perfect as an integrated whole. Our task is to give all of it—1917 to 1941—the most harmonious, comprehensive meaning possible. . . . So if the definitions contained in § 2 are to be harmonized with the policy underlying § 5(b) and § 9(a) of the amended Act, we would have to say that they are merely illustrative, not exclusionary. . . .

"We believe a more harmonious reading of § 2, § 5(b) and § 9(a) is had if the concept of enemy or ally of enemy is given a scope which helps the amendment of 1941 to fulfill its mission and which does not make § 9(a) for the first time in its history and contrary to the normal connotation of its terms stand as a barrier to the recovery of property by foreign interests which have no possible connection with the enemy.

"It is suggested, however, that this approach may produce results which are both absurd and uncertain. It is said that the entire property of a corporation would be jeopardized merely because a negligible stock interest, perhaps a single share, was directly or indirectly owned or controlled by an enemy or ally of an enemy. It is also pointed out that securities or interests other than stock might be held by an enemy or ally of an enemy and used effectively in economic warfare against this country. But what these interests are, the extent of holdings necessary to constitute an enemy taint what part of a friendly alien corporation's property may be retained where only a fractional enemy ownership appears, are left undecided. Since we assume from the allegations of the complaint that respondent is free from enemy taint and therefore is not within the definition of enemy or ally of an enemy, those problems are not now before us. We recognize their importance; but they must await legislative or judicial clarification."

(To like effect, see *Swiss Bank Corp. v. Clark*, 73 F. Supp. 896 (S. D. N. Y., Aug. 15, 1947).)

War—enemy property—U. S. controls.

SILESIA AMERICAN CORPORATION v. CLARK. 68 Sup. Ct. 179.

United States Supreme Court, Dec. 8, 1947. Reed, J.

The Alien Property Custodian in 1942 vested certain stock of Silesian American Corporation, a Delaware corporation which had been a debtor under the Bankruptcy Act of the United States since July 30, 1941. The stock vested stood in the name of Non Ferrum, a Swiss corporation, which

the Custodian found to have held it for the benefit of a German corporation. The certificates were alleged to have been deposited as security for a loan with a group of Swiss banks. The Custodian directed Silesian American Corp. to cancel the outstanding certificates standing in the name of Non Ferrum, and issue new certificates to the Custodian. The company feared liability to the holders of the Non Ferrum certificates if it should do so. When the Silesian American Corporation asked the bankruptcy court for instructions, the Swiss Banks requested that court to give no instructions to issue new certificates until their controversy with the Custodian had been adjudicated.

The District Court ordered Silesian American Corp. to issue new certificates to the Custodian, stating that the Trading With the Enemy Act, sections 5(b) and 7(e) protected the debtor corporation if it did so. The Swiss Banks did not appeal, but the debtor (Silesian) appealed to the Circuit Court of Appeals for the Second Circuit, which affirmed the decision of the District Court, 156 F. (2d) 793. The Circuit Court held that Silesian had no standing to assert the interests of its shareholders, and that the order of the Custodian to issue new certificates was valid. On certiorari to the Supreme Court, this judgment was affirmed. The Court said, in part:

"There is no doubt but that under the war power, as heretofore interpreted by this Court, the United States, acting under a statute, may vest in itself the property of a national of an enemy nation. Unquestionably to wage war successfully, the United States may confiscate enemy property. *United States v. Chemical Foundation*, 272 U. S. 1, 11. . . . Nor can there, we think, be any doubt that any property in this country of any alien may be summarily reduced to possession by the United States in furtherance of the war effort. Every resource within the ambit of sovereign power is subject to use for the national defense. This section was amended during war to cover the taking of alien property. It is limited to a war or a declared emergency period. While a natural hesitancy exists against so interpreting the war power clause as to expand its scope to cover incidents not intimately connected with war, we think reasonable preparation for the storm of war is a proper exercise of the war power. This seizure of alien property, in time of emergency, is of that character. We need not consider whether the general welfare clause could be a source of congressional power over alien property. This taking may be done as a means of avoiding the use of the property to draw earnings or wealth out of this country to territory where it may more likely be used to assist the enemy than if it remains in the hands of this government. Or the commandeered property of a friendly alien may be used to prosecute the war. The problems of compensation may await the judicial process. *Central Union Trust Co. of New York v. Garvan*, 254 U. S. 554. . . . War brooks no delay. The Constitution imposes none.

"The section 5 (b) (1)(b), and Executive Order under which the Custodian acted authorized the vesting in him by his order of the property of a foreign national. This description covered stock ownership of a foreign national in Silesian. The fact that the certificates did not come into the hands of the Custodian is immaterial. They are evidences of the property right of a foreign national in Silesian that is subject to be vested in the Custodian by the Act. . . . Section 5 (b) (1)(B) specifically states, 'and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.' . . . Since the Custodian was authorized to vest and to sell the property by § 5, we think that the power to require the issue of new certificates was incidental to that authority. As one purpose of § 5 (b) (1)(B) was to authorize the seizure of the interests of foreign nationals in domestic corporations so that such interest could be used or sold, such authority to participate in management or to transfer the stock interests would be frustrated if customary evidences of the ownership could not be required from the corporation. The power of the Custodian to demand the certificates is plain. The correlative duty to obey the order equally so, if the effect of obedience does not do violence to other valid requirements of the statute or make Silesian liable to bona fide holders of the old stock.

"Silesian in specific terms is protected from any liability to bona fide holders such as Non Ferrum or the Swiss Banks by reason of any infirmity in the Custodian's vesting order or his direction to Silesian to issue new certificates for the Non Ferrum stock. . . .

"Finally there is the argument that Silesian cannot be compelled to issue the new certificates because the friendly aliens who claim interests in the Non Ferrum stock may not succeed in recovering the just compensation for the taking. See *Russian Volunteer Fleet v. United States*, 282 U. S. 481, 489. . . . The Constitution guarantees to friendly aliens the right to just compensation for the requisitioning of their property by the United States. . . . We must assume that the United States will meet its obligations under the Constitution. Consequently, friendly aliens will be compensated for any property taken and Silesian is protected by the exculpatory clauses of the Act from any claim from its alien stockholders."

Aliens—real property rights—laws discriminating against ineligible aliens.

OYAMA v. STATE OF CALIFORNIA. 68 Sup. Ct. 269.

United States Supreme Court, Jan. 19, 1948. Vinson, C. J.

The State of California brought escheat proceedings against Fred Oyama, an American-born son of Japanese parents, and his alien (Japanese) father Kajiro Oyama, claiming the escheat of two parcels of agricultural land bought by the alien father for his minor son when the latter

was six and nine years old, respectively. The California Alien Land Law provided that aliens ineligible to citizenship could not acquire, own, occupy, lease or transfer agricultural land, that any property acquired in violation of the statute should escheat to the state, and that the same result would follow any transfer made with intent to prevent, evade, or avoid escheat, which would be presumed when an ineligible alien paid the consideration for a transfer to a citizen or eligible alien. The ineligible-alien father had here paid the consideration. The Supreme Court of California affirmed a judgment in favor of the State, 29 Cal. (2d) 164, 173 P. (2d) 794. This was reversed by the Supreme Court of the United States, Justices Reed, Jackson and Burton dissenting.

The majority opinion held that the application of the Alien Land Law in this case deprived the minor American citizen, Fred Oyama, of "the equal protection of California's laws and of his privileges as an American citizen," thus violating the Fourteenth Amendment to the United States Constitution. The opinion found it unnecessary to re-examine the question of the validity of the prohibition against the ownership of agricultural land by ineligible aliens.

Justice Black in a concurring opinion, joined in by Justice Douglas, based his view "on the broader grounds that the basic provisions of the California Alien Land Law violate the equal protection clause of the Fourteenth Amendment and conflict with federal laws and treaties governing the immigration of aliens and their rights after arrival in this country."

Justice Murphy, in a concurring opinion joined in by Justice Rutledge, considered that the California Alien Land Law should be deemed unconstitutional because it was based on racial discrimination. This opinion stated, after a long discussion of the constitutional objections: "Added to this constitutional defect, of course, is the fact that the Alien Land Law from its inception has proved an embarrassment to the United States Government. This statute has been more than a local regulation of internal affairs. It has overflowed into the realm of foreign policy; it has had direct and unfortunate consequences on this country's relations with Japan. Drawn on a background of racial animosity, the law was so patent in its discrimination against Japanese aliens as to cause serious antagonism in Japan, even to the points of demands for war against the United States. The situation was so fraught with danger that three Presidents of the United States were forced to intervene in an effort to prevent the Alien Land Law from coming into existence. A Secretary of State made a personal plea that the passage of the law might turn Japan into an unfriendly nation. Even after the law became effective, federal authorities feared that enforcement of its provisions might jeopardize our relations with Japan. That fear was in large part responsible for the substantial non-enforcement of the statute prior to World War II. But

the very existence of the law undoubtedly has caused many in Japan to bear ill-feeling toward this country, thus making friendly relations between the two nations that much more difficult.

"Moreover, this nation has recently pledged itself, through the United Nations Charter, to promote respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion. The Alien Land Law stands as a barrier to the fulfillment of that national pledge. Its inconsistency with the Charter, which has been duly ratified and adopted by the United States, is but one more reason why the statute must be condemned. And so in origin, purpose, administration and effect, the Alien Land Law does violence to the high ideals of the Constitution of the United States and the Charter of the United Nations."

The dissenting justices felt that "unless the California Land Laws are to be held unconstitutional, . . . the presumption and its resulting effects must be accepted as legal."

Aliens—deportation—"sentenced more than once" to imprisonment.

FONG HAW TAN v. PHELAN. 68 Sup. Ct. 374.

United States Supreme Court, Feb. 2, 1948. Douglas, J.

Petitioner, a Chinese national, was convicted of murder under each of two counts of an indictment, charging the murders of two victims, and was sentenced to life imprisonment by a single judgment. He was a later paroled, and taken into custody for deportation under the provision of the law requiring such deportation of an alien who is "sentenced more than once" to a term of one year's imprisonment, or more, because of the conviction of a crime involving moral turpitude. The Circuit Court of Appeals for the Ninth Circuit affirmed the dismissal of his petition for release on habeas corpus, 162 F. (2d) 663. On certiorari to the Supreme Court,

Held, reversed. The legislative history of the provision was said to have shown the purpose to be to deal with habitual criminals, or repeating offenders. The court stated that this provision authorized deportation "only where an alien having committed a crime involving moral turpitude and having been convicted and sentenced, once again commits a crime of that nature and is convicted and sentenced by it. We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile." The Court indicated that it followed the cases of *Wallis v. Tecchio*, 65 F. (2d) 250 (C. C. A. 5th, 1933), and *Opolich v. Fluckey*, 47 F. (2d) 950 (N. D. Ga., 1930), rather than the views held in other circuits in *Nishimoto v. Nagle*, 44 F. (2d) 304 (C. C. A. 9th, 1930), *Johnson v. United States*, 28 F. (2d) 810 (C. C. A. 2d, 1928), *U. S. ex rel. Mignozzi v. Day*, 51 F. (2d) 1019 (C. C. A. 2d, 1931), and *Tassari v. Schmucker*, 53 F. (2d) 570 (C. C. A. 4th, 1931).

Jurisdiction—crimes committed in part within the country.

KAUFMAN v. UNITED STATES. 163 F. (2d) 404.

Circuit Court of Appeals, Sixth Circuit, July 14, 1947. Allen, C. J.

Defendant was convicted in the District Court for the Eastern District of Michigan of violations of the anti-fraud provisions of the Securities and Exchange Act, and the Mail Fraud Statute, as well as of conspiracy to violate these statutes. He appealed on several grounds, among them that his acts, and in particular the mailing of certain communications addressed to persons in the United States, took place in Canada. The Court held that despite this fact there was no lack of jurisdiction in the District Court, referring to *United States v. Steinberg*, 62 F. (2d) 77 (C. C. A. 2nd, 1932), upholding a conviction under an indictment for using the mails to defraud where the letter was posted in Canada and received in the United States.

Enemy aliens—removal—duration of power—status of Germany in 1947.

UNITED STATES EX REL. KESSLER v. WATKINS. 163 F. (2d) 140.

Circuit Court of Appeals, Second Circuit, July 24, 1947. A. Hand, C. J.

(Certiorari denied, United States Supreme Court, Dec. 8, 1947, 68 S. Ct. 220.)

Habeas corpus was denied to German nationals who were held in custody as dangerous enemy aliens for removal from the United States. The court found that authority to intern and remove enemy aliens was not limited to the period before the cessation of hostilities, citing *Citizens Protective League v. Clark*, 155 F. (2d) 290 (C. A. D. C. 1946), *U. S. ex rel. Schlueter v. Watkins*, 158 F. (2d) 853 (C. C. A. 2d, 1946), and *U. S. ex rel. Hack v. Clark*, 159 F. (2d) 552 (C. C. A. 7th, 1947). The Court further found that the Congressional debates preceding the enactment of the statute did not indicate that the statute was confined to "war in fact." The Court concluded by stating:

"Appellants' final argument that the German Government ceased to exist after unconditional surrender and that there is, therefore, no 'foreign nation or government' as to which there is a declared war, cannot be sustained. As we said in *Lehigh Valley R. Co. v. State of Russia*, 2 Cir., 21 F. 2d 396, 401, quoting from Moore's Digest of International Law, 'though the government changes, the nation remains, with rights and obligations unimpaired.' See also *Guaranty Trust Co. of New York v. United States*, 304 U. S. 126, 137, 58 S. Ct. 785, 82 L. Ed. 1224; *The Sapphire*, 11 Wall. 164, 168, 20 L. Ed. 127. The German nation declared war on us December 8, 1941, through the Nazi Government, and that war has never been ended for the President declared in his Proclamation [2714 of Dec. 31, 1946]

. . . that 'hostilities have terminated' but also that 'a state of war still exists.' "

War—enemy property—U. S. controls.

STANDARD OIL CO. v. CLARK. 163 F. (2d) 917.

Circuit Court of Appeals, Second Circuit, Sept. 22, 1947. Clark, C. J.

Standard Oil Company (New Jersey) and three subsidiaries brought an action against the Alien Property Custodian (for whom the Attorney General was substituted) seeking the recovery of certain patents and shares of stock vested by defendant as property in which there was an enemy alien interest. Plaintiffs' rights to the property turned upon agreements and arrangements with I. G. Farben-industrie, A. G. Plaintiffs were granted partial relief by the District Court for the Southern District of New York, 64 F. Supp. 656, and appealed. Plaintiffs' appeal was refused, and defendant's appeal granted in part. The Court discussed at length the coöperation between Standard Oil Company (New Jersey) and I. G., the attempted concealment of the German interest in the property, and the inference that the transfers in 1939 to plaintiffs were made with the intention that the property be returned after the war.

Naturalization—"residence."

PETITION OF HERSCHEMANN. 163 F. (2d) 865.

Circuit Court of Appeals, Seventh Circuit, Oct. 27, 1947. Minton, C. J.

Petitioner, a native citizen of Peru, came to the United States in 1919, worked here until 1923, and was thereafter employed by an American company or subsidiary of American company in Cuba. He was admitted to the United States in 1939 for permanent residence and after five months declared his intention to become an American citizen. He first maintained residence in Florida and later in Chicago with a married sister, keeping stock and Government bonds in Chicago and giving that as his address. When he petitioned for naturalization, June 21, 1946, in reliance on 8 U. S. Code, section 707(b), excusing an applicant from the requirement of continuous residence in the United States if employed "by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States or a subsidiary thereof," the Government contended that in a letter of March 14, 1946 to the Bureau of Internal Revenue petitioner had objected to attempts to impose income taxes upon him and stated that he would have no alternative but to abandon his efforts to establish a residence in the United States for the purpose of seeking citizenship. The District Court for the Northern District of Illinois held that petitioner had the required residence in the United States, and his admission to naturalization was affirmed by the Circuit Court of Appeals.

*Naturalization—"good moral character."*UNITED STATES *v.* FRANCOSO. 164 F. (2d) 163.

U. S. Circuit Court of Appeals, 2nd Circuit, Nov. 5, 1947. L. Hand, C. J.

The court affirmed an order of the District Court for the Eastern District of New York admitting petitioner to citizenship, although the United States contended that he lacked good moral character in that he had in 1925 married in Connecticut a woman who was his niece. It was shown that such a marriage was unlawful in Connecticut and that petitioner knew that fact. It further appeared that a Catholic priest had at some time "solemnized" the marriage, with the consent of his bishop, both spouses being communicants of the Catholic Church.

Judge Learned Hand stated that the test of "good moral character" in the naturalization statute was "the commonly accepted mores," the "generally accepted moral conventions current at the time." He said, "Indeed, such a marriage would have been lawful in New York until 1893, as it was at common-law. To be sure its legality does not finally determine its morality; but it helps to do so, for the fact that disapproval of such marriages was so long in taking the form of law, shows that it is condemned in no such sense as marriages forbidden by 'God's law.' It stands between those and the marriage of first cousins which is ordinarily, though not universally, regarded as permissible."

He added: "In *Petition of Lieberman* [50 F. Supp. 121], Judge Galston ruled that it was not a bar to the wife's naturalization that she had married her uncle in New York, when, learning that that marriage was illegal, the couple went to Rhode Island, were there married by a rabbi, and returned to New York: this because in Rhode Island a marriage between Jews which is allowed by their religion is lawful. Moreover, the Attorney General of New York has ruled that an uncle and niece, lawfully married in another state, are still lawfully married after they take up a residence in New York. Perhaps there is no state in the Union to which this couple could repair and be lawfully married; but these rulings show that the question is one of legality rather than morals."

✓ *Enemy aliens—transfer of sovereignty—status of Lorraine native.*UNITED STATES *EX REL.* GREGOIRE *v.* WATKINS. 164 F. (2d) 137.

Circuit Court of Appeals, 2nd Circuit, Nov. 6, 1947. Swan, C. J.

Habeas corpus was granted by the United States District Court for the Southern District of New York against the detention as an enemy alien of a man born in Metz, Lorraine in 1894, who became a French national when Lorraine was restored to France under the Treaty of Versailles, who entered the United States in 1941 on a French passport, and who was arrested in 1942 and ordered detained as a native of Germany; 69 F. Supp. 889. On appeal, affirmed.

Judge Swan said: "Upon the merits the question presented is the proper meaning to be ascribed to the statutory phrase 'natives . . . of the hostile nation or government.' If we say that the words refer to the time of the alien's birth, we shall be able to intern and deport aliens born in a place which was then within the boundaries of a 'nation or government' now hostile but has now come within the boundaries of a nation or government recognized to be friendly. On the other hand, we shall not be able to intern and deport those born in a place which has come within the boundaries of a nation or government now hostile, if it was then within the boundaries of a nation or government now friendly. Between these alternatives choice must be made, if any logically consistent construction of the statute is to be attained. On the whole it would seem more consonant with the policy of the statute to hold that the decisive fact is whether the alien's birthplace is within the boundaries of a hostile or a friendly nation at the time of his arrest for internment. This court explicitly so held in *United States ex rel. D'Esquiva v. Uhl*, 137 F. 2d 903."

Judge Swan pointed out that the same result had been reached with respect to an Alsatian in *United States ex rel. Umecker v. McCoy*, 54 F. Supp. 679 (N. D. 1944).

Aliens—deportation—alien brought in against his will.

UNITED STATES EX REL. PAETAU *v.* WATKINS. 164 F. (2d) 457.

Circuit Court of Appeals, Second Circuit, Nov. 26, 1947. Clark, C. J.

This case involved an attempt to deport a man born in Guatemala of a German father, who lived most of his life in Guatemala, who in 1942 was brought to the United States and held in an internment camp for some months, who went to Germany in 1942 when given the option of doing so or of remaining in custody in the United States, who obtained a Guatemalan passport in 1946 and returned to Guatemala, and who was almost immediately thereafter arrested by Guatemalan authorities and ordered deported to Germany. When the plane carrying him reached the United States, he was taken into custody by the immigration officials and first treated as an alien in transit, but thereafter held for deportation. When he sought habeas corpus, Judge Holtzoff, sitting in the District Court for the Southern District of New York, dismissed the writ and remanded the alien to custody; *U. S. ex rel. Lindenau v. Watkins*, 73 F. Supp. 216 (S. D. N. Y., Sept. 11, 1947).

On appeal, this order was reversed, and the alien released on habeas corpus. The Court held that an alien brought to the United States against his will could not be deported until after he had been given an opportunity to depart voluntarily, holding the case controlled by *U. S. ex rel. Bradley v. Watkins*, 163 F. (2d) 328, and *U. S. ex rel. Ludwig v. Watkins*, 164 F. (2d) 456. The court said: "We can see no difference between the

forceful bringing of an alien into this country directly by the United States authorities or such action by a foreign government with the consent of the United States."

Judge Holtzoff in the District Court opinion stressed the applicability to deportation cases of the requirement under the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), that courts should set aside administrative action found to be "unsupported by substantial evidence."

(To like effect, see *United States ex rel. Ludwig v. Watkins*, 164 F. (2d) 456 (C. C. A. 2d, Nov. 26, 1947), involving a German brought to the United States in 1942 under armed guard from Nicaragua. The court refused to confine the holding in *U. S. ex rel. Bradley v. Watkins*, 163 F. (2d) 328, to prisoners of war.)

Leased bases—status as "Territory or possession of U. S."

CONNELL v. VERMILYA-BROWN Co. 164 F. (2d) 924.

Circuit Court of Appeals, Second Circuit, Nov. 28, 1947. Clark, C. J.

Plaintiffs were hired in New York and employed by defendant in the construction of air field installations for the United States base in Bermuda. They sued the employer for additional compensation due under the Fair Labor Standards Act of 1938, which was specifically applicable to any employer engaged in commerce, etc., among the States or from any State to any place outside thereof, the word "State" being defined to include "any Territory or possession of the United States." Reversing the District Court for the Southern District of New York, the Court found that the Act applied to work performed in the Bermuda base leased from the British Government under the agreement and lease of 1940-1941 (55 Stat. 1560).

The Court, after enumerating the applicable provisions of the Agreement and Lease, stated "The cumulative effect of these various provisions compels the conclusion that the areas are subject to fully as complete control by the United States as obtains in other areas long known as 'possessions' of the United States," such as Guam, the guano islands, Samoa, Puerto Rico, Panama Canal Zone, etc. It admitted that "The Agreement does not specifically declare the leased areas to be part of the territory of the United States."

With respect to defendant's contention that the question whether the leased bases are "possessions" is a political one, the Court said: "Undoubtedly courts should avoid the determination of political issues, but it is difficult to see how this is such an issue. Before us is a matter of interpretation of an Act in issue between two groups of private parties. Obviously this arises in consequence of political acts, and those conceivably might have been of such precise form or exact agreement with a foreign state as to settle the question. But here they were not, and we must de-

termine this private controversy, even if it arises as to areas affected by an agreement between nations. . . . As a matter of fact the courts have not hesitated to determine the status of acquired territory for the purposes of a particular case and with reference to particular acts of Congress, including those passed prior to such acquisition. . . .

"If, however, the other departments of government have shown a clear view as to the proper answer to this problem, we should certainly take at least careful note of that fact. But, notwithstanding defendant's contentions, it seems clear that they have not. Thus defendants quote from the opinion of the Attorney General upholding the validity of the Executive Agreement here, wherein he states, 'The privilege of maintaining such bases is subject only to limitations necessary to reconcile United States' use with the sovereignty retained by Great Britain.' [39 Ops. Atty. Gen. 484, 485.] But this is aimed at a different problem; it can be easily claimed as authority favoring the plaintiffs' position, rather than the reverse. They also cite a letter from the State Department, by its Acting Legal Adviser, to the effect that 'this Government has not made any claim that the bases in Bermuda are territories or possessions of the United States and there would therefore appear to be no reason for any ruling or opinion on the matter.' Both the facts that this statement was made in quite a different setting and that there was 'no reason for any ruling or opinion on the matter' clearly negate any suggestion that the Executive Departments have determined the issue."

The Court stated that only two cases dealing squarely with the point had been found, both holding the Act applicable; *Eckert v. Elmhurst Contracting Co.*, 185 Misc. 108, 56 N. Y. S. (2d) 98, affirmed 186 Misc. 100, 61 N. Y. S. (2d) 730, and *Crowe v. Elmhurst Contracting Co.*, 74 N. Y. S. (2d) 445. The Court alluded to *Watt v. McWilliam Dredging Co.*, City Court, New York, N. Y. L. J., Nov. 1, 1944, p. 1130, which held the Act inapplicable to construction work in Greenland in an area leased to the United States Government by Denmark, because the person concerned was not engaged in commerce under the Act; and to four cases in which the Act was held inapplicable to persons working in a defense base in Iran, *Filardo v. Foley Bros.*, 181 Misc. 136, 45 N. Y. S. 2d 262; in a base in Brazil, *Campbell v. White Const. Co.*, Civ. No. 28-230, D. C. S. D. N. Y., 1944, unreported; and in Canada, *Bernhard v. Metcalfe Const. Co.*, 64 F. Supp. 953, and *Burns v. Metcalfe Const. Co.*, 69 F. Supp. 381.

Naturalization—period between declaration and petition.

ZIGALNITSKY v. UNITED STATES. 164 F. (2d) 549.

Circuit Court of Appeals, Second Circuit, Dec. 4, 1947. L. Hand, C. J.

The court reversed the decision of the District Court, 72 F. Supp. 987, which had denied naturalization to a man whose declaration of intention

had been filed July 15, 1938 and petition for naturalization filed Oct. 23, 1946. He had been caught by the war in Shanghai. Prior to the entry into force of the Nationality Act of 1940, it was required that the petition be filed not less than two nor more than seven years after the declaration of intention. Section 331 of the 1940 Act (8 U. S. Code, sect. 731) requires that the declaration of intention be filed "not less than two nor more than seven years at least prior" to the petition for naturalization. The succeeding section provides that the applicant shall file his petition "not less than two nor more than ten years after such declaration of intention" has been filed.

The Court pointed to the incongruity between these two sections of the 1940 Nationality Act, and the Congressional Committee action which resulted in the inconsistent provisions, but stated that it did not have to reconcile them since here the declaration had been prior to the 1940 Act. Section 347 of the Act (8 U. S. Code, sect. 747) provided that nothing in the Act "shall be construed to affect the validity of any declaration of intention . . . which shall be valid at the time" the Act takes effect. The Court therefore held the prior declaration to be valid and unaffected by Section 331 of the Act, which dealt with declarations of intention, and that the petition under Section 332 was filed within ten years after the declaration. Naturalization was therefore held proper.

Naturalization—"good moral character."

REPOUILLE v. UNITED STATES. 165 F. (2d) 152.

Circuit Court of Appeals, Second Circuit, Dec. 5, 1947. L. Hand, C. J.

Petitioner for naturalization filed his petition on Sept. 22, 1944. On Oct. 12, 1939 he had deliberately put to death by chloroform his son, a boy of thirteen who had suffered from birth from a brain injury destining him to be an idiot, blind, mute, deformed, and a "physical monstrosity." At the time petitioner had four other children toward whom he had always been a "dutiful and responsible parent." He was indicted for manslaughter in the first degree; the jury brought in a verdict of manslaughter in the second degree with a recommendation of "utmost clemency"; and the judge sentenced him to from five to ten years imprisonment, execution to be stayed and the defendant placed on probation, from which he was discharged in December, 1945. The District Court for the Eastern District of New York granted the petitioner naturalization, despite the contention by the Immigration and Naturalization Service that petitioner had not shown himself to be a person of "good moral character" for the five years preceding his petition for naturalization. On appeal by the Immigration and Naturalization Service,

Held, reversed, and petition for naturalization dismissed without prejudice to the filing of a second petition. Judge L. Hand said: . . . Con-

cededly, except for this act he conducted himself as a person of 'good moral character' during the five years before he filed his petition. Indeed, if he had waited before filing his petition from September 22, to October 14, 1944, he would have had a clear record for the necessary period, and would have been admitted without question.

"Very recently we had to pass upon the phrase 'good moral character' in the Nationality Act [citing *United States v. Francioso*, 164 F. 2d 163]; and we said that it set as a test, not those standards which we might ourselves approve, but whether 'the moral feelings, now prevalent generally in this country' would 'be outraged' by the conduct in question: that is, whether it conformed to 'the generally accepted moral conventions current at the time.' In the absence of some national inquisition, like a Gallup poll, that is indeed a difficult test to apply; often questions will arise to which the answer is not ascertainable, and where the petitioner must fail only because he has the affirmative. Indeed, in the case at bar itself the answer is not wholly certain; for we all know that there are great numbers of people of the most unimpeachable virtue, who think it morally justifiable to put an end to a life so inexorably destined to be a burden to others, and—so far as any possible interest of its own is concerned—condemned to a brutish existence, lower indeed than all but the lowest forms of sentient life. Nor is it inevitably an answer to say that it must be immoral to do this, until the law provides security against the abuses which would inevitably follow, unless the practice were regulated. Many people—probably most people—do not make it a final ethical test of conduct that it shall not violate law; few of us exact of ourselves or of others the unflinching obedience of a Socrates. . . . It is reasonably clear that the jury which tried Repouille did not feel any moral repulsion at his crime. Although it was inescapably murder in the first degree, not only did they bring in a verdict that was flatly in the face of the facts and utterly absurd—for manslaughter in the second degree presupposes that the killing has not been deliberate—but they coupled even that with a recommendation which showed that in substance they wished to exculpate the offender. Moreover, it is also plain, from the sentence which he imposed, that the judge could not have seriously disagreed with their recommendation.

"One might be tempted to seize upon all this as a reliable measure of current morals; and no doubt it should have its place in the scale; but we should hesitate to accept it as decisive, when, for example, we compare it with the fate of a similar offender in Massachusetts, who, although he was not executed, was imprisoned for life. Left at large as we are, without means of verifying our conclusion, and without authority to substitute our individual beliefs, the outcome must needs be tentative; and not much is gained by discussion. We can say no more than that, quite independently of what may be the current moral feeling as to legally administered euthanasia, we feel reasonably secure in holding that only a minority of

virtuous persons would deem the practise morally justifiable, while it remains in private hands, even when the provocation is as overwhelming as it was in this instance."

Frank, C. J., dissented, pointing out that the District Judge had found petitioner to be a person of good moral character and saying that the sources of information of the majority of the Court regarding the pertinent mores were not shown to be superior to those of the District Judge. Judge Frank stated his view "that the correct statutory test (the test Congress intended) is the attitude of our ethical leaders. That attitude would not be too difficult to learn; indeed, my colleagues indicate that they think such leaders would agree with the district judge. But the precedents in this circuit constrain us to be guided by contemporary public opinion about which, cloistered as judges are, we have but vague notions." His recommendation was that, "in any case such as this, where we lack the means of determining present-day public reactions, we should remand to the district judge with these directions: The judge should give the petitioner and the government the opportunity to bring to the judge's attention reliable information on the subject, which he may supplement in any appropriate way. All the data so obtained should be put of record. On the basis thereof, the judge should reconsider his decision and arrive at a conclusion. Then, if there is another appeal, we can avoid sheer guessing, which alone is now available to us, and can reach something like an informed judgment."

War—duration.

ARROYO v. PUERTO RICO TRANSPORTATION AUTHORITY. 164 F. (2d) 748.

Circuit Court of Appeals, First Circuit, Dec. 10, 1947. Magruder, C. J.

In determining what was the end of a period set by the Public Service Commission of Puerto Rico for operation of certain buses, where the period was until "one year after the termination of the war in Europe," the Court held that this meant one year from the German surrender on May 8, 1945, rather than one year from the Proclamation of Cessation of Hostilities issued Dec. 31, 1946, or the date when a Treaty of Peace with Germany might be concluded and enter into force.

Aliens—right to enter as treaty merchant—abandonment of status.

SCHACHT v. YOUNG. 164 F. (2d) 882.

Circuit Court of Appeals, Fifth Circuit, Dec. 11, 1947. Waller, C. J.

The Court affirmed a decision of the District Court for the Northern District of Texas, 68 F. Supp. 216, denying an application for habeas

corpus seeking the release from detention for deportation, of a German who was admitted to the United States on Aug. 4, 1939 as a treaty merchant for the sole purpose of carrying on trade in cotton between the United States and Germany. About two months after his entry he accepted employment with an American firm which formerly exported cotton to Germany but which during the time of his employment exported none to Germany because of the outbreak of war in Europe. The Court said that "the mere hiring of himself to a local merchant that also carries on no trade with the alien's country, did not fulfill the condition of such alien's entry into this country and . . . such failure to maintain his status as a treaty merchant authorized his deportation without regard to his attitude toward this, or toward his own country."

International copyright protection.

KHAN v. LEO FEIST, INC. 165 F. (2d) 188.

Circuit Court of Appeals, Second Circuit, Dec. 20, 1947. A. Hand,
C. J.

This decision gave protection to the copyright on a song "Rum and Coca-Cola" composed in Trinidad by a native of that island in 1943 and covered by a United States copyright issued in 1945, against the defendants who obtained in December, 1944, a United States copyright on a similar song with identical title.

Aliens—deportation—"entry."

YUKIO CHAI v. BONHAM. 165 F. (2d) 207.

Circuit Court of Appeals, Ninth Circuit, Dec. 29, 1947.

Habeas corpus was granted against the detention and deportation of a Japanese national who had entered the United States in 1907, remained within the continental United States until 1934, gone to Alaska then as a seasonal employee of a Seattle cannery company to be returned at the end of the season, and whose vessel bringing him back from Alaska to Seattle made an unscheduled stop of three hours at Victoria, British Columbia. Petitioner was below at the time, and knew neither of the intention of the ship to leave United States waters nor that it had done so. He was arrested for deportation in 1941 on the ground that at the time of his alleged entry in 1934 he was not in possession of an unexpired immigration visa and was an alien ineligible to citizenship. Habeas corpus had been denied by the District Court for the Western District of Washington, but was granted on appeal, the court holding on the authority of *Delgadillo v. Carmichael*, 68 Sup. Ct. 10 (1947), that the return from the brief unscheduled stop in the Canadian port was not an "entry" for immigration law purposes.

Nationality—expatriation.

ATTORNEY GENERAL OF UNITED STATES *v.* RICKETTS. 165 F. (2d) 193.

Circuit Court of Appeals, Ninth Circuit, Dec. 30, 1947. Healy, C. J.

Ricketts was born in Oklahoma Feb. 3, 1902 of native-born parents, and was taken by his parents to Canada in 1910, where his father in 1914 became naturalized as a British subject. Ricketts continued to reside in Canada with his parents until attaining his majority, and three years thereafter returned to the United States for about six months; thereafter he returned to Canada for ten years, and again entered the United States in 1936 and has remained there since, participating in civic affairs and voting in elections. The immigration authorities contended that Ricketts had lost American citizenship, and he thereupon brought an action before the District Court for the Eastern District of Washington seeking a declaratory judgment that he was a national of the United States. Judgment was given in his favor and the Attorney General of the United States appealed.

Held, affirmed. The Court said, in part, after citing the Nationality Act of 1940: "The statute provides that a person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent, 'provided however, That nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years without acquiring permanent residence in the United States: Provided further, That a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his voluntary act, be permitted within two years from the effective date of this chapter to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an American citizen.' Failure to return and take up permanent residence during the prescribed period is deemed by the statute to be a determination on the part of such person to discontinue his status as an American citizen and estops him from thereafter claiming evidentiary that status.

"The decisive question here is whether there is substantial evidentiary support for the finding . . . that appellee did not by his own voluntary act expatriate himself. The Attorney General insists that prior to appellee's entry into the United States for permanent residence he was shown to have elected to become a Canadian national. The argument is based mainly on two facts, (1) that appellee, during his minority, had held public office in Canada, and (2) that after attaining his majority he had

voted once at a provincial election in Alberta and had several times voted in that province at school municipal elections.

"Concerning the office held, appellee testified that the post was that of counsellor or secretary of the school board in an isolated community where there were many foreigners who could not write English. Someone with knowledge of the language was needed for the post, and appellee, who was at the time about eighteen years old, undertook to fill it. The Attorney General concedes that the mere holding of public office during minority is not an act of expatriation, since an infant is incapable of a binding choice, *Perkins v. Elg*, 307 U. S. 325, 59 S. Ct. 884, 83 L. Ed. 1320. It is contended only that appellee's conduct in this respect bears on his mental attitude. Similar if more persuasive effect is claimed for his conduct in voting, that is to say it is not contended that the act of voting amounts to expatriation as a matter of law, but that it is strong evidence of an election to expatriate.

"Appellee's conduct in other particulars is said to evidence such an election, notably statements of Canadian nationality which he made in the filling out of forms in various of his clashes with the Immigration Service. . . . He said that the formal statements were, in effect, dictated or coerced by the Service. A like explanation was proffered of a statement contained in a selective service form, made out in Spokane while appellee was under arrest by the Service and was being threatened with deportation.

"On the other side there is testimony of numerous witnesses in support of the court's finding that appellee has continuously asserted his claim of United States citizenship. His persistence in returning to this country and his long residence here, on an apparently permanent basis, are facts tending further to negative the thought that he had voluntarily expatriated himself. It is undeniable that his conduct was equivocal, but not more so, perhaps, than was his status. By virtue of his American birth and the later naturalization of his father in Canada he was at once a citizen of the United States and a Canadian national. His American citizenship is deemed to continue unless he has been deprived of it through the operation of a treaty or congressional enactment, or by his 'voluntary action in conformity with applicable legal principles.' *Perkins v. Elg*, supra, 307 U. S. page 329. . . .

"The proviso does not undertake to specify what voluntary act or acts will amount to an expatriation. In that respect the framers of the legislation seem to have been content to follow the not very precise verbiage of Chief Justice Hughes in *Perkins v. Elg*. The departmental decisions bearing on the subject, so far, at least, as they have been called to our notice, are neither consistent nor particularly persuasive. In considering cases affected by the statutory proviso we must remember that Congress intended to extend liberal treatment to those of dual nationality regardless of their age at the time of the Act's passage or the length of their prior residence

abroad. Being remedial, the proviso is entitled to a liberal construction." (In referring to the departmental decisions, the Court cited *Matter of W*, Administrative Decisions under the Immigration and Nationality Laws, Vol. I, p. 24, and *Matter of S*, *ibid.*, 476, 481.)

Naturalization—residence.

UNITED STATES *v.* LIARSEN. 165 F. (2d) 433.

Circuit Court of Appeals, Second Circuit, Dec. 31, 1947.

Reversing the District Court for the Eastern District of New York, the Court denied naturalization to a Norwegian national who had entered the United States Oct. 24, 1922, who had volunteered Jan. 14, 1942 for service in the Norwegian armed forces, who had served outside the United States in those forces until July 10, 1945 (except for a twelve-day visit), and who petitioned for naturalization Aug. 23, 1945. The Court held, in a *per curiam* opinion, that the law makes "an actual absence from this country for a year or more during the five years preceding the filing of the petition for naturalization an absolute bar to the granting of it unless one of the statutory exemptions is proved." In *re* Hilden, 60 F. Supp. 845 (S. D. N. Y., 1945), was cited in support of this construction of the Nationality Act of 1940.

Naturalization—"good moral character."

IN *RE* MOGUS. 73 F. Supp. 150.

District Court, Western District of Pennsylvania, July 17, 1947.

Gourley, D. J.

Naturalization was denied petitioner, a native of Yugoslavia, who had there married in 1911 and had one child, who came to the United States in 1913, and who had last communicated with his wife and child in 1918 and had not contributed to their support since that time. The Court said, in part:

" 'Naturalization is a privilege not a right,' and the burden is on the petitioner to establish facts that entitle him to that privilege, including the fact that he has been of good moral character for the statutory period of five years prior to the filing of his petition for citizenship. 'Good moral character' which an alien seeking naturalization must prove results from acts and conduct of an individual, and is of such a character as measures up to the standards of average citizens of the community in which the alien resides. What is of good moral character within the meaning of the statute is not easy of determination in all cases. The standard may vary from one generation to the other. A husband and father has not only a moral and marital obligation in the eyes of God to provide for a wife and child, but an absolute legal obligation to make or

provide proper maintenance and care. . . . The conduct of the petitioner continues to this day, as far as neglect to show some interest or concern in the welfare of his wife, his child at this time, no doubt, being self-sustaining. . . .

"Furthermore the acts and conduct of the petitioner, in failing to provide for his wife and child, do not measure up to the standards of the average American citizen, and I do not believe that the petitioner would be well disposed to the good order, welfare and happiness of this country."

Naturalization—residence—status while prisoner of war.

IN RE YARINA. 73 F. Supp. 688.

District Court, Northern District of Ohio, Aug. 22, 1947. Freed, D. J.

Naturalization was granted a petitioner who had come to the United States in 1923 as a two-year-old child. In March, 1941 he went to Wake Island, fought against the Japanese attack there in December, 1941, and was taken as a prisoner of war to Shanghai and later Japan, where he was held until August or September, 1945. He thereafter returned to the United States, married a citizen, and sought naturalization under the statute requiring three years continuous legal residence preceding the filing of his petition. Under section 707 of title 8, United States Code, which provides that absence for a continuous period of one year or more breaks the continuity of residence, the Commissioner of Naturalization and Immigration urged that incarceration of petitioner in the Japanese prison camp during the period in question prevented his naturalization. The Court said:

"Absence from the United States manifestly means absence voluntarily initiated. The petitioner never left the United States. But the forces of the enemy transported him to a prison camp from Wake Island. Under the circumstances, therefore, Yarina never left his residence in the United States within the purview of the statute. It is this Court's considered judgment that the petitioner's continuous residence in this country which began on August 7, 1923 was never interrupted by the acts of his Japanese captors.

"The Commissioner's contention, in which it is claimed he is supported by *In re Hilden*, D. C., 60 F. Supp. 845, may have some force or argumentative value if the petitioner had voluntarily left the United States and his return was prevented by acts beyond his control. That is not the case here presented.

"It is not the strongly impelling motive of gratitude for his acts of bravery in defending the territory of the United States against the aggression of the enemy, but logical reasoning that brings this Court to the conclusion that the petition of Yarina should be granted."

*Nationality—expatriation.*YUICHI INOUE *v.* CLARK. 73 F. Supp. 1000.

District Court, Southern District of California, Sept. 5, 1947. Cavanah, D. J.

Plaintiffs of Japanese ancestry, born in the United States, brought actions to cancel their renunciations of American citizenship made while detained in Relocation Centers together with Japanese who were not American citizens. One was only 17 when he signed his application for renunciation. After discussing the conditions in the Relocation Centers and the strong pressure brought upon plaintiffs by anti-American Japanese present in these centers, the Court found that the renunciations had been signed under duress, coercion and undue influence, and therefore were null and void. The plaintiff who was only 17 was held to be below the legal age at which he could expatriate himself, the court citing *U. S. ex rel. Baglivo v. Day*, 28 F. (2d) 44, and *Ex parte Chin King*, 35 Fed. 354. The Court further pointed out: "Furthermore, these plaintiffs have not expatriated themselves. To constitute an expatriation there must be an actual removal from the country of which the individual is a citizen or a subject, made voluntarily by a person of full age."

Naturalization—expedited for military service.

PETITION OF YOU LO CHEN. 74 F. Supp. 619.

District Court, District of Massachusetts, Sept. 19, 1947; rehearing Nov. 18, 1947. Sweeney, D. J.

A Chinese national came to the United States in 1936, entered the University of Illinois as a student and took part in ROTC training, and in early 1942 sought admission to the United States Army for service in Burma. He passed the physical examination and was given several inoculations by the Army, but was informed that there was then no opening for one of his qualifications. The Court found that he did everything possible to enter the armed forces, but was never actually called to service. Naturalization was granted under the provision of the Nationality Act permitting naturalization of aliens who served "in the military or naval forces of the United States during the present war." The Court stated that the ROTC service was not the basis, but the efforts to enter the army in 1942, citing *Petition of Delgado*, 57 F. Supp. 460, and *Petition of Agustin*, 62 F. Supp. 832, 835. The Court said: "This petitioner should not be denied citizenship because he technically did not have 'service' in the true military sense of the word."

Naturalization—"good moral character"—procedure of examination.

PETITION OF F. 73 F. Supp. 655.

District Court, Southern District of New York, Oct. 1, 1947. Rifkind, D. J.

Naturalization was denied to a petitioner who admitted the commission of adultery within the five year period for which proof of good moral character was required. At the time petitioner had been living apart from his wife for eleven years. The Court vigorously criticized the manner in which the naturalization examiner had extracted the admission from petitioner, who was not represented by counsel.

Jurisdiction—crime by alien member of crew of merchant vessel.

UNITED STATES v. DIXON. 73 F. Supp. 683.

District Court, Eastern District of New York, Oct. 7, 1947. Byers, D. J.

Defendant moved to dismiss indictments brought against him for manslaughter and assault on the American merchant vessel Silliman proceeding out of Ceuta, Spanish Morocco. He was a British subject and cook of the vessel. The master of the vessel at once arranged for a launch to take the defendant and his victim ashore. The next morning the master gave written authority to the British Consul at Ceuta (in the absence of an American Consul) to guard the men and make a report to the United States Consul at Tangier. Six days later the British Vice-consul handed the defendant over to the master of another American merchant vessel to bring to the United States; and on his arrival defendant was arrested and held for trial in the place where he was first brought into the country.

The Court denied the motion to dismiss, holding that the crime had been committed within American jurisdiction on a vessel on the high seas. It said, in part:

"It is the present view that the master of the Silliman could have brought Dixon here in custody, and that he merely accomplished that purpose by securing the assistance of the British Vice-Consul and that of the master of the Richardson.

"Dixon was not entitled to any intervention of the courts of Spanish Morocco, or of Great Britain. He had signed on a merchant ship of the United States and thereby subjected himself to the laws of this country, and he has been duly indicted, and must stand trial. . . .

"He was never in the custody of the British Vice-Consul as such, but the latter was requested by the master of the defendant's ship to assist in the discharge of the latter's duty and authority; no necessity for extradition arose, as the defendant never sought asylum in any country. . . .

"It is no answer to the manslaughter charge that the alleged victim died ashore in the hospital, and not on the ship where seemingly he was shot."

Immunity from jurisdiction—suit against foreign government.

ISBRANDTSEN COMPANY, INC. v. NETHERLANDS EAST INDIES GOVT. ET AL.
78 F. Supp. 48.*

District Court, Southern District of New York, Nov. 3, 1947. Coxe,
D. J.

Plaintiff company, as owner and operator of the American steamship *Martin Behrman*, brought an action against the Netherlands East Indies Government, H. J. Van Mook, and the Netherlands Government, growing out of the seizure of the vessel in the Netherlands East Indies. A suggestion of immunity was presented to the Court in two communications from the Acting Secretary of State addressed to the Attorney General and transmitted by him to the court. Each was accompanied by a communication to the Department of State from the Netherlands Ambassador, stating that the Netherlands and the Netherlands East Indies are parts of the Kingdom of the Netherlands, a sovereign state which had not consented to be sued, and that the acts imputed to Dr. Van Mook were done in his official capacity as the chief governmental officer administering the Netherlands East Indies. The communication from the Secretary of State said that "this Government recognizes the claim of immunity presented by him on behalf of the respondents, since the Department of State considers that they are not subject to judicial process in the courts of this country."

The court granted the immunity sought by respondents, merely quoting the communications and saying: "This suggestion of immunity follows the customary procedure in cases of this kind (see *Compagnie Espanola v. Navemar*, 303 U. S. 68; *Mexico v. Hoffman*, 324 U. S. 30), and I think that immunity from suit claimed on behalf of the respondents must, therefore, be granted."

War damage claims—U. S. statute—loss by enemy submarine action.

MATSON NAV. CO. v. WAR DAMAGE CORP. 74 F. Supp. 705.

District Court, Northern District of California, Nov. 17, 1947. Goodman, D. J.

While en route from Hawaii to the continental United States, plaintiff's steamship *Lahaina* was attacked and sunk by a Japanese submarine, on or about Dec. 11, 1941. Plaintiff sought to recover from the War Damage Corporation the value of the steamship, contending that this incident fell within the protection afforded by defendant under the amendment of March 27, 1942 to the Reconstruction Finance Corporation Act, 56 Stat. 175. Protection under that amendment was extended to real and personal property "situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories,

* From manuscript copy made available by Mr. W. R. Vallance, Washington, D. C.

and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States," and "to such property in transit between any points located in any of the foregoing." Compensation for the loss or damage to such property, subsequent to Dec. 6, 1941 and prior to the establishment of the insurance system on July 1, 1942, was provided "without requiring a contract of insurance or the payment of premium or other charge."

In denying plaintiff's contention that the sinking of the steamship was loss or damage to "property in transit between" Hawaii and the United States within the meaning of the statute, the Court pointed to its legislative history and its primary purpose to deal with the fear of enemy bombing along the coasts.

Aliens—entry—Canadian Indians' rights under Jay Treaty and laws.

UNITED STATES EX REL. GOODWIN *v.* KARNUTH. 74 F. Supp. 660.
District Court, Western District of New York, Nov. 28, 1947. Knight,
D. J.

Petitioner, a full-blooded American Indian born on the Six Nations Reservation in Ontario and claiming to be a member of the Upper Cayuga Tribe of the Six Nations Indians, married in 1934 a native citizen of Canada of the white race. She had entered the United States and was taken into custody by the United States immigration officials for deportation on the ground that she was not in possession of an immigration visa and passport. On her petition for habeas corpus, the court ordered her discharge from custody, on the ground that section 226a of Chapter 6 of Title 8 of the United States Code, dealing with immigration, provided that, "This chapter shall not be construed to apply to the right of American Indians born in Canada to pass the borders of the United States." In so holding the Court held that the term "American Indian" was to be given "a racial connotation" rather than "a political connotation," based upon the Indian Act of Canada, which in section 14 provided that "Any Indian woman who marries any person other than an Indian . . . shall cease to be an Indian within the meaning of this Act," except for her share of annuities and moneys distributed to Indians.

Judge Knight said, in part, "It appears that no case precisely like the present has been judicially decided. *McCandless v. United States*, 25 F. 2d 71, was decided by the Circuit Court of Appeals, 3rd Cir. on March 9, 1928, a few days before the enactment of 8 U. S. C. A., § 226a. In that case Paul Diabo, a full-blooded Indian of the Iroquois tribe, known as the Six Nations, born on a reservation of that tribe in the Dominion of Canada, had been arrested on a warrant issued on complaint of the Commissioner of Immigration for the port of Philadelphia for an alleged violation of law in entering the United States without complying with the immigration

laws. The question was decided on a writ of habeas corpus. 'After hearing he was discharged from custody, whereupon this appeal was taken, and the question involved is whether the immigration laws of the United States apply to members of the tribe of the Six Nations born in Canada.' 25 F. 2d at page 71.

"The Circuit Court quoted Article III of the Jay Treaty, 8 Stat. 117, made in 1794 between Great Britain and the United States, and article 9 of the Treaty of Ghent, 8 Stat. 222, which ended the war of 1812, and affirmed the order of the court below (D. C. 18 F. 2d 282) discharging Diabo from custody. . . .

"Article III of the Jay Treaty of 1794 provided: 'It is agreed that it shall at all times be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's Bay Company only excepted).'

"Respondent urges that the Jay Treaty was abrogated by the War of 1812 (citing *Karnuth v. United States*, 279 U. S. 231, 49 S. Ct. 274, 73 L. Ed. 677) and that under the Treaty of Ghent and said section 226a only members of Indian tribes were intended. I do not agree with this view.

"Article 9 of the Treaty of Ghent provided: 'The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities * * *.'

"Article III of the Jay Treaty mentions 'the Indians dwelling on either side of the said boundary line.' The Circuit Court in *McCandless v. United States*, supra, 3 Cir., 25 F. 2d 71, at page 73, held that the Treaty of Ghent 'recognized and restored the Indian status of the Jay Treaty.' Section 9 of the Treaty of Ghent mentions 'tribes or nations of Indians.' Said section 226a mentions 'American Indians born in Canada.' If the latter term is broader in its connotation than the terms used in the treaties, the statute must prevail 'for it is well settled that in case of a conflict between an act of Congress and a treaty,—each being equally the supreme law of the land,—the one last in date must prevail in the courts.' *Hijo v. United States*, 194 U. S. 315, 324. . . ."

Nationality—expatriation—military service under duress—oath of allegiance.

IN RE GOGAL. 75 F. Supp. 268.

District Court, Western District of Pennsylvania, Dec. 31, 1947.
Gourley, D. J.

Gogal was born in the United States in 1901, taken by his mother to Czechoslovakia in 1904, was met there in 1911 or 1912 by his father who soon thereafter died, and in 1922 received a notice that he would be inducted in the Czechoslovak army. Believing that he was an American citizen and therefore need pay no attention to the notice, he disregarded the formal notice of induction on Oct. 1, 1922; and on Oct. 28, 1922, shortly after he reached the age of 21, he was forcibly seized by the gendarmes and turned over to the Czechoslovak military authorities. He stated that thereupon he was given a uniform, was taken with a large number of men to a field, and that some distance away an officer read something he could not hear or understand. He stated that he was not required to raise his hand nor was any oath administered to him, and that neither before nor after did he take any oath of allegiance to Czechoslovakia. He served two years in the army, and in 1927 sought to come to the United States. He was denied an American passport by the American consulate at Prague, but the following year was permitted to enter the United States from Canada as an American citizen. Thereafter he resided in the United States, but when he sought to obtain a passport for his wife and children to come to this country, the authorities denied that he was an American citizen. After military service in World War II, he petitioned for naturalization as an American citizen.

The Court denied the petition for naturalization, finding that he was an American citizen by birth and had never expatriated himself. The Court held that the petitioner "was inducted into the Czechoslovakian Army under duress, force, fear and intimidation," and added: "The statute providing that a national of the United States by birth or naturalization shall lose his nationality by entering, or serving in, the armed forces of a foreign state, unless expressly authorized by laws of the United States, does not cause loss of nationality where such a person is drafted over his protest into foreign military service, and the statute is limited to cases where induction into foreign military service is voluntary." On this point the Court cited the Attorney General's Opinion no. 130, volume 40, Oct. 16, 1947, 16 Law Week 2249.

As for expatriation by the taking of an oath of allegiance to a foreign state, the Court said: "At the time of his induction petitioner was taken to a field . . . together with a large group of men; he was not required to raise his arm to Almighty God; he did not hear what was being stated, and was not informed that an oath was being administered. It is

impossible for any person to swear before their God, or affirm, that certain things will be done or not done without knowing or hearing that to which the oath is being taken." Consequently, the Court found that there had been no oath of allegiance to Czechoslovakia.

State responsibility—inducing another government to embargo shipments.

ANGLO-AMERICAN TRADING CORP. v. UNITED STATES. 75 F. Supp. 260.

United States Court of Claims, Jan. 5, 1948.

Plaintiff brought an action against the United States to recover for an alleged wrongful taking of plaintiff's meat in New Zealand on the theory that the United States, through the Combined Food Board, induced the New Zealand Government to embargo its shipment from New Zealand. On defendant's demurrer to the petition and plea to the jurisdiction, plaintiff's petition was dismissed. The Court said with respect to plaintiff's claim:

"It says the Government of New Zealand was induced by the United States and Great Britain to put on this embargo, and, hence, it concludes that the United States took its meat and so is required by the Fifth Amendment to pay for it.

"For more than one reason plaintiff is not entitled to recover. Even if the embargo had been imposed by this country, plaintiff would not be entitled to recover. . . . A fortiori, it could not be liable for an embargo imposed by a foreign government.

"It could not be liable even though its officers illegally conspired with others to induce the foreign government to do so."

Aliens—denial of commercial fishing license to alien ineligible for citizenship.

TAKAHASHI v. FISH AND GAME COMM. 185 P. (2d) 805.
California Supreme Court, Oct. 17, 1947. Edmunds, J.

In a mandamus proceeding brought by a Japanese national to compel the Fish and Game Commission of California to issue him a commercial fishing license, the Court ordered judgment for the defendants, reversing the decision below which had directed the issuance of a license. Section 990 of the California Fish and Game Code required every person, engaging in commercial fishing or bringing fresh fish ashore in the state, to obtain a license, which "may be issued to any person other than a person ineligible to citizenship." Plaintiff sought, unsuccessfully, to have this law held unconstitutional.

Admitting that the protection of the Fourteenth Amendment extends to aliens within the United States as well as to citizens, the Court said that classification did not violate the requirement of "equal protection of the laws" when it had substantial relation to a legitimate object sought to be

accomplished. It had long been held that a state might discriminate against all aliens with respect to taking fish or game, and the court stated that for conservation purposes it was reasonable to discriminate between those eligible to naturalization and those not eligible. It stated that if it were necessary to cut down on the number of persons who might hunt and fish, ineligible aliens should be the first to be deprived of the privilege, adding "it may not be said that the refusal of the state to allow aliens ineligible to citizenship in the United States to take, or assist in the taking of, fish for private use is so palpably arbitrary as to deny such aliens constitutional guarantees." The court also pointed to decisions upholding the constitutionality of laws forbidding aliens ineligible to citizenship to own agricultural land.

Despite plaintiff's contentions, the Court found that the California statute did not single out Japanese alone as aliens ineligible for citizenship, and that the statute could not violate plaintiff's treaty rights since the treaty between the United States and Japan had been terminated in 1940.

So far as concerned the bringing ashore of fish caught beyond California waters, the court said: "it is well established that the state, in the exercise of its police power may regulate and control the taking, possession and sale, or transportation, of fish and game. This principle is applicable to sea products caught upon the high seas beyond the three-mile limit of state jurisdiction and sought to be brought into or transported over portions of the state which have been subjected to statutory regulations affecting the taking, possession, and sale of fish and other marine products . . . [citing and discussing cases] . . . in furtherance of its declared public policy to prohibit ineligible aliens from taking its animals *ferae naturae*, the state may also refuse to issue a commercial fishing license to aliens ineligible to United States citizenship so as to permit them to bring ashore sea products at any point in the state for the purpose of selling the same in a fresh state."

Three judges dissented, on the grounds that, "There is no reason why aliens ineligible to citizenship may be placed in a class by themselves, at least as long as they are residents of the state"; that under *Truax v. Raich*, 239 U. S. 33, aliens may not be denied the right to work generally; and that even if all aliens might be denied the right to engage in commercial fishing, "yet there is no conceivable basis for discrimination between different classes of aliens."

Treaties—state succession—rights of Irish nationals under British treaty.

HANAFIN *v.* MCCARTHY. 57 Atl. (2d) 148.

Supreme Court of New Hampshire, Feb. 3, 1948. Duncan, J.

Three Irish residents of Ireland brought a partition action with respect to land in New Hampshire which had belonged to a relative who died

intestate. Defendants, sisters of plaintiffs, moved to dismiss the action on the ground that under New Hampshire law only resident aliens might take or hold real estate. The Supreme Court of New Hampshire held that defendants' motion to dismiss should be denied, in view of the Convention Relating to the Tenure and Disposition of Real and Personal Property, signed by the United States and Great Britain on March 2, 1899. The Court held the provisions of that Convention, whereby nationals of one country were allowed a period within which to sell real property which they would inherit if not forbidden by the local laws, were effective between Ireland and the United States. The Court said:

"While by Article IV, provision was made for adhesion to the Convention, upon notice, by colonies and foreign possessions of Her Britannic Majesty, and territories beyond the seas governed by the United States, no serious doubt appears concerning the binding effect of the treaty upon Ireland as a part of the United Kingdom, one of the original contracting parties. . . . See *Bamforth v. Ihmsen*, 28 Wyo. 282, 204 U. 345, 205 P. 1004. As to the parties, the provisions of Article IV of the treaty were plainly inapplicable.

"Since the signing of the treaty, the Free State of Ireland, now Eire, has been created out of Ireland, by Articles of Agreement dated December 6, 1921, and given the force of law by act of the Imperial Parliament. 12 Geo. 5, c. 4; 60 L. R. Stats. 4 (1922). By these Articles, the Irish Free State took the 'same constitutional status in the Community of Nations known as the British Empire, as the Dominion of Canada,' and other dominions (Schedule, par. 1), and its position in relation to the Imperial Parliament and Government was established as equivalent to that of Canada. *Id.*, par. 2. In 1922, the Irish Free State (Constitution) Act was adopted, by which the executive authority of the Free State was vested in the King, exercisable by the representative of the Crown. . . .

"In neither of these acts was the status of existing treaties expressly adverted to. While in practice since 1922, many treaties binding upon the Irish Free State have been concluded in the name of the Government of Ireland, the practice of His Majesty's serving as contracting party in respect of Ireland still survives. See 32 Am. Jour. Int. L., 467, 480 et seq. In *Murray v. Parkes* [1942], 2 K.B. 123, the view was expressed that the status of Ireland as a member of the British Commonwealth of Nations has remained unchanged since the Acts of Parliament of 1921 and 1922, although the parliamentary powers of the Free State were broadened by the Statute of Westminster. 22 Geo. 5, c. 4. See also 'The Status of the Irish Free State,' 22 Can. Bar. Rev. 183.

"The defendants have called to our attention no action on the part of the Irish Free State, or Eire, which would indicate repudiation by that government of the treaty of 1899. By statute, it has been provided that aliens may take, acquire, hold, and dispose of real property in that country,

in the same manner as citizens. Aliens Act, 1935 of Ireland (No. 14 of 1935). Of the binding effect of a treaty upon a state succeeding to one of the party states, it has been said: 'It is evident that on the creation of a new state, by a division of territory, that new state has a sovereign right to enter into new treaties and engagements with other nations, but until it actually does, the treaties by which it was bound as a part of the whole state will remain binding on the new state and its subjects.' Moore, *Int. Arb.*, III, 3321, 3223 [sic]; Crandall, *Treaties, Their Making and Enforcement*, 2d Ed. 437. Generally speaking, it is recognized that 'a state formed by separation one from another * * * succeeds to such treaty burdens of the parent state as are permanent and attached to the territory embraced in the new state.' Crandall, *supra*, 434, and authorities cited.

"As was pointed out by Mr. Justice Cardozo speaking for the Court, in *Techt v. Hughes*, 229 N. Y. 222 . . . the problem is more political than judicial, and because of the reciprocal nature of privileges relating to ownership of lands, 'the inference is a strong one * * * that the privileges, unless expressly revoked, are intended to endure.' Holding that treaty provisions were not abrogated by war between the parties, the opinion comments that 'until the political departments have acted, the courts, in refusing to give effect to treaties, should limit their refusal to the needs of the occasion' and in determining whether a treaty survives, reach their conclusions in the light of such broad consideration as 'the dictates of fair dealing, and the honor of the nation.' See also Uren, *The Succession of the Irish Free State*, 28 *Mich. L. Rev.* 149; 48 *C. J. S.*, *International Law*, 15.

"Applicability of the view that the obligations of a sovereignty are binding upon its successor is supported by the exchange of notes in 1924 and 1925 between the Department of State and the British Foreign Office, through the American Ambassador at London, printed as a note by the Department of State to the original Convention. It there appears that 'the establishment of the Irish Free State is not regarded (by the British Government) as affecting the applicability to Ireland of the convention of the 2nd March, 1899, relative to the disposal of real and personal property.' *Treaty Series*, No. 146, pp. 3, 4.

"In the absence of evidence of any different view in the matter on the part of the political departments either of the Irish Government or our own, we are justified in relying upon the view expressed by the British Government, which we understand to be accepted by the State Department and regarded by it as being presently in force. See *Sullivan v. Kidd*, 254 U. S. 433, 442 . . .; *Terlinden v. Ames*, 184 U. S. 270, 285 et seq. . . .; *Clark v. Allen*, 331 U. S. 503; 67 S. Ct. 1431; 'The Legal Nature of Treaties,' 10 *Am. Jour. Int. L.* 706, 721, 722. It follows that to the extent that our

statute conflicts with the provisions of the treaty, the former is superseded by the latter, which must control. . . .

"We accordingly conclude that in accordance with the treaty of 1899, the plaintiffs have an estate by inheritance, and may take their respective interests in the New Hampshire real estate of the decedent for purposes of sale as provided by the treaty."

Foreign decrees—effect of Nazi denationalization and sequestration.

BLOCH v. BASLER LEBENS-VERSICHERUNGS-GESELLSCHAFT IN BASEL.

73 N. Y. S. (2d) 523.

New York Supreme Court, Trial Term, New York County, June 24, 1947. Church, J.

Plaintiffs, the insured and his beneficiary under life insurance policies issued in Hamburg, Germany, in 1929 and 1931 by the attorney in fact in Germany of a Swiss insurance company, brought an action against that insurance company to recover the cash surrender values of the policies. When the policies were issued plaintiffs were German nationals resident in Germany, but thereafter came to the United States and became American citizens. A German decree of July 14, 1933 provided that German nationals residing abroad could be declared to have lost their German citizenship if they had jeopardized German interests by violating their duty and loyalty to Germany, and that upon the loss of citizenship the property of such citizens was forfeited to the German Government. Under German Foreign Exchange decrees, persons domiciled in Germany and corporations having a place of business in Germany were required to transfer property to the Reichsbank unless acquired with the written license of the Foreign Exchange Office. On Jan. 12, 1937 defendant informed plaintiffs' attorney in fact in Germany that as plaintiff no longer resided in Germany the remittance of the cash surrender value of the policy came within the Foreign Exchange Control laws and decrees.

On May 31, 1939 the German Government informed defendant that payment of the cash surrender value of the policies should be made only with the express approval of the German Foreign Exchange Office. On Oct. 31, 1939 the German citizenship of plaintiffs was revoked, and on Dec. 14, 1939 the German Government informed the defendant that plaintiffs' property had been attached. On Mar. 23, 1940 it was declared forfeited, and on Sept. 9, 1940 the defendant at its Berlin branch paid the cash surrender value of the policies to the German Government.

The court directed judgment in favor of the defendant, dismissing the complaint without prejudice to any action or proceeding for the enforcement of whatever rights they may now or hereafter have in Germany or Switzerland.

In holding that the defendant had successfully sustained this defense, the court quoted with approval from *Holzer v. Deutsche Reichsbahn-Gesell-*

schaft, 277 N. Y. 474, 478-9, 14 N. E. (2d) 798, 799-800, in part as follows: "Under the decisions of this court and of the Supreme Court of the United States, the law of the country or state where the contract was made and was to be performed by citizens of that country or state governs. *Salimoff & Co. v. Standard Oil Co. of New York*, 262 N. Y. 220. . . . Within its own territory every government is supreme (*United States v. Belmont*, 301 U. S. 324 . . .) and our courts are not competent to review its actions. *Wulfsohn v. Russian Socialist Federated Soviet Republic*, 234 N. Y. 372. . . . We have so held, 'however objectionable' we may consider the conduct of a foreign government. *Dougherty v. Equitable Life Assur. Soc. of the United States*, 266 N. Y. 71, 83. . . . 'Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.' *Oetjen v. Central Leather Co.*, 246 U. S. 297, 303. . . . In the *Dougherty* Case, *supra*, 266 N. Y. 71, at page 90 . . ., we have held: 'It cannot be against the public policy of this State to hold nationals to the contracts which they have made in their own country to be performed there according to the laws of that country.' " The court also cited *Kleve v. Basler Lebens-Versicherungs-Gesellschaft in Basel*, 182 Misc. 776, 45 N. Y. S. (2d) 882 (1943).

✓ *War—effect on contract with enemy.*

MEIJER v. GENERAL CIGAR CO. 73 N. Y. S. (2d) 576.

New York Supreme Court, Special Term, N. Y. County, July 30, 1947. Hecht, J.

Plaintiff, a national of the Netherlands resident in that country, there entered into a contract in 1915 with defendant New York corporation, to act as its representative and tobacco buyer in the Netherlands. The contract was to continue from year to year unless terminated by notice delivered to plaintiff before the end of any year with respect to the following year. Plaintiff was paid according to the contract for his services from 1915 to 1940. Despite the absence of any notice in conformity with the contract, plaintiff was not paid subsequently to 1940, and now brings this action for the unpaid salary. Numerous defenses were advanced by the corporation, among them that after the invasion and occupation of the Netherlands by German forces in 1940, and the existence of a state of war between the United States and Germany after Dec. 11, 1941, that state of war terminated any contract then existing whereby defendant engaged plaintiff to perform services in the Netherlands. The court granted plaintiff's motion to dismiss this defense as insufficient. It said, in part:

"First, defendant urges the authority of *Neumond v. Farmers Feed Co.*, 244 N. Y. 202, at pages 206, 207 . . . where the court said, per Lehman, J.:

"The effect of war upon existing contract between belligerents will vary with the nature of the obligation—that is yet to be fulfilled. . . . if the contract is still executory at the beginning of the war, if there are mutual obligations that are yet to be fulfilled, the contract will be terminated when the essential purpose of the parties would be thwarted by delay, or the business efficacy or value of their bargain materially impaired. . . ."

"But this principle, that performance is excused if war causes failure of the stipulated counter-performance by the other party, applies to contracts to be performed here. Since the contract herein was to be performed in Holland, Dutch law governs the validity of any excuse urged for non-performance. . . . If Dutch law does excuse performance under such circumstances, that can be proved under the sixth affirmative defense [that by the law of the Netherlands nonperformance is excused when rendered impossible for an indefinite time by causes beyond the party's control and without his fault]. . . ."

"Secondly, defendant urges the authority of *Griswold v. Waddington*, 16 Johns. 438, where the Court of Errors held, on the basis of a scholarly opinion by Chancellor Kent, that: 'Every American citizen and every British subject resident in their respective countries, became, by the declaration of war (of 1812), enemies to each other; and the idea that any commercial intercourse or pacific dealing could lawfully subsist between them, without the clear and express sanction of the government, is utterly inconsistent with the new class of duties growing out of a state of war.' . . ."

"We may assume that the public policy underlying this principle is so strong that it would persuade our courts to deny recovery to a real enemy (like a German) who sued here during the war on a contract to be performed in Germany and which could legally be performed there, if the result of the suit would be to give aid and comfort to the enemy during the war. Even in the case of a real enemy, the contract would not be nullified by the war, but would merely be suspended for the duration of the war, unless it were such a contract as affords aid or comfort to the enemy. *Sands v. New York Life Ins. Co.*, 50 N. Y. 626. . . . 'The contract would remain; the remedy would be suspended.' *Cohen v. New York Mut. Life Ins. Co.*, 50 N. Y. 610, 619. . . ."

"As was said by the Appellate Division in this Department, per Cohn, J. (*Drewry, S. A. R. L. v. Onassis*, 266 App. Div. 292, 295, 42 N. Y. S. 2d 74, 77):

"It is well settled that war suspends the right of nonresident enemy plaintiffs to prosecute actions in our courts. . . ."

"The controlling reason for the rule appears to be that if the alien enemy prevails and obtains a judgment, he will obviously add the sum he recovers to the resources of the power of which he is a subject. . . ."

"Of course, Dutch nationals are not enemies in the real sense of the term. See *Van Der Veen v. Amsterdamsche Bank*, 178 Misc. 668, 671, 35 N. Y. S. 2d 945, 949. They come within the definition of an 'enemy' in the Trading with the Enemy Act, 50 U. S. C. A., Appendix, § 1 et seq., which defines an 'enemy' as being any individual, etc., of any nationality 'resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war' and prohibits any person in the United States to trade with any enemy '*except with the license of the President*,' Section 3 (italics supplied). . . . Under the foregoing circumstances and since a contract with even a real enemy could still be enforced 'with the return of peace' if it does not give aid and comfort to the enemy, I am of the opinion that this defense is insufficient unless defendant pleads that it made application for a license to perform the contract herein and such application was denied. This was the principle laid down by Eder, J., in regard to the regulation freezing foreign funds, Executive Order No. 8389, 12 U. S. C. A., § 95a note, and I agree entirely with his reasoning. *Dezsofi v. Jacoby*, 178 Misc. 851, 852, 853, 36 N. Y. S. 2d 672, 673-675. See, to the same effect, *Kiyochi Fujikawa v. Sunrise Soda Water Works Co.*, 9 Cir., 158 F. 2d 490. In *Joring v. Harriess*, 2 Cir., 292 F. 974, certiorari denied, 263 U. S. 710 . . . , the defense of the Trading with the Enemy Act was sustained when it was proved at the trial that defendants were refused their license or permission to complete the agreement. 292 F. at page 979."

Immunity from jurisdiction—counterclaim against sovereign state plaintiff.

REPUBLIC OF HAITI *v.* PLESCH ET AL. 73 N. Y. S. (2d) 645.

New York Supreme Court, Special Term. New York County, Oct. 3, 1947. Pecora, J.

The Republic of Haiti brought an action to obtain a declaratory judgment as to its rights in certain securities which formerly belonged to two defendants but which it claimed had been nationalized by Haitian decrees. These defendants interposed a counterclaim regarding the ownership of these securities and also other securities to which they alleged that plaintiff asserted ownership. The Republic of Haiti moved to dismiss this counterclaim, on the ground that it is a sovereign state entitled to immunity from suit.

This motion to dismiss the counterclaim was granted, but without prejudice to the service of an amended answer which might contain a counterclaim confined to the securities covered by plaintiff's action. The Court said:

"The question presented is whether the defendants may plead such counterclaim against plaintiff, a sovereign state. The general rule as to

immunity of a sovereign state is stated in *Lamont v. Travelers Ins. Co.*, 281 N. Y. 362, 24 N. E. 2d 81, 83, where the court said:

“‘The courts of this State cannot adjudicate any controversy to which a foreign sovereign government is a necessary party unless the foreign government, as a suitor, asks our courts to enforce some right claimed by the foreign government or, voluntarily, submits to our courts for adjudication a claim which another makes against it.’

“‘It is well settled that a sovereign state, by commencing an action in our courts, does not thereby waive its immunity so as to permit any of the parties to the action to assert counterclaims against it. *People v. Dennison*, 84 N. Y. 272; *Republic of France v. Pittsburgh Steel Export Co., Inc.*, 112 Misc. 688, 184 N. Y. S. 280; *French Republic v. Inland Nav. Co.*, D. C., 263 F. 410; *Kingdom of Roumania v. Guaranty Trust Co.*, 2 Cir., 250 F. 341.

“‘To the extent that a counterclaim seeks an adjudication of title to the precise property which is the subject of a sovereign state’s action, a court has jurisdiction to entertain it. *Irish Free State v. Guaranty Safe Deposit Co.*, 126 Misc. 269, 212 N. Y. S. 421; *Id.*, 129 Misc. 551, 222 N. Y. S. 182, affirmed 229 App. Div. 755, 241 N. Y. S. 844; *People of Porto Rico v. Ramos*, 232 U. S. 627. . . . However, here, for the most part, the counterclaim seeks an adjudication of title and relief with respect to other property in addition to that which is made the subject of the complaint. Insofar as the property involved in the complaint is concerned, a counterclaim would be proper. The inclusion in the counterclaim of other property, however, removes this case from the exception above stated.

“‘Another exception to the general rule is that where the counterclaim arises out of the same transaction upon which plaintiff bases its claim, a defendant has a right of set-off. *United States v. National City Bank of New York*, 2 Cir., 83 F. 2d 236, certiorari denied 299 U. S. 563. . . . However, defendants’ counterclaim here neither arises from the same transaction nor is it a set-off. Each party is seeking a declaratory judgment and equitable relief directing various banks, respectively, to turn over to them specifically different property or the proceeds thereof.

“‘The argument of defendants, in reliance on the *Lamont* case, supra, that the claim of plaintiff to sovereign immunity cannot be recognized until proof thereof is established in the courts is untenable. In the *Lamont* case Mexico was not a party to the action. It asserted, however, that it was an indispensable party. The ruling there was that a mere bare assertion of a claim was not sufficient until some proof of interest was presented. Such rule can have no application here since the Republic of Haiti is already a party. The doctrine of the *Lamont* case might have been invoked if defendants had brought independent suits against the other defendants and the impleaded defendants without making the Re-

public of Haiti a party. Even then it would be quite apparent that the Republic of Haiti was a necessary party."

Expatriation—children—effect on father's right to take children abroad.

PEOPLE EX REL. CHOOLOKIAN v. MISSION OF IMMACULATE VIRGIN. 76
N. Y. S. (2d) 509.

New York Supreme Court, Special Term, New York County, Dec. 30,
1947. Lumbard, J.

Habeas corpus was sought by a father to obtain the release of three of his minor children from the defendant mission and a New York Hospital, in order that he might take them with him to Soviet Armenia. The children in question were 12, 11, and 6, and had been voluntarily committed in 1942 to appropriate institutions because of the father's economic difficulties and mother's insanity. The father, two older children and the wife (released from an asylum for that purpose) sailed for the Soviet Union under a plan whereby the Soviet Government paid for their passage. He sought to take these three with him. Under the New York law, the children who had been voluntarily committed to the institutions could not be returned to the custody of their father unless the consent of the Department of Welfare was given or the Court should find that the interest of the children would be promoted thereby and that the father is fit, competent, and able to duly maintain, support and educate the children.

In denying their release on habeas corpus, the Court referred to the status of the children as American citizens by birth, and to the lack of adequate evidence that in case of return to Soviet Armenia the children would be properly cared for. The Court said, in part: "As American citizens, these children if taken to a foreign land by their father would not lose their citizenship, despite the father's repatriation as a citizen of Soviet Armenia, unless and until they become 23 years old without having acquired permanent residence in the United States. . . .

"From an exchange of notes between the State Department of our Government and the Soviet Government in April and May 1947, it appears that 'notwithstanding all their personal efforts and the repeated representations of the American Embassy in Moscow' the Soviet Government for some time has refused to permit American citizens to leave Soviet territory for the United States and has even refused to permit representatives of our Government to interview such citizens. It has also refused to permit American citizens to bring their wives back to this country. Probably at no time in our history as a nation have we been confronted with a situation where our citizens have been treated virtually as prisoners by a foreign power with whom we are at peace. Recent reliable reports from France indicate that their citizens are similarly treated by the Soviet. *New York Herald Tribune*, December 23, 1947, page 1. . . .

"Of course American citizens are free to expatriate themselves. . . .

"And conversely our laws have given to infant American citizens the right of preserving their citizenship by returning to this country within two years after their twenty-first birthday at which time we consider them to be capable of making their own choice and acting thereon in matters of such importance.

"If the father were permitted in this case to take these three infant children to Soviet Armenia, it seems clear under present conditions that their right to avail themselves of the privileges of their American citizenship might be forever lost. It is unthinkable that an American court could permit this father to place his infant children in such an irretrievable position. While he may make that choice for himself, it will certainly not promote the best interests of the children, as this court is required to find by Section 383 of the Social Welfare Law, to permit the father or anyone to dissipate beyond redemption these priceless rights of the children. The exercise of these rights should not be left to the remote chance that they might some day before their twenty-third birthday be able to escape from Armenia and return to the United States. . . .

"It is appropriate to observe that a reading of the Soviet note of April 21, 1947, and the reply of our State Department of May 28, 1947, makes it seem probable that our State Department in consenting to assist the repatriation of Armenians did not realize that this would involve the taking to Soviet Armenia of natural born American citizens who in no sense could be considered as objects of repatriation. Nothing in the American note of May 28 can be construed to consent to the taking of such natural born American citizens . . . since the note of the United States speaks only of the departure of 'persons of Armenian origin,' although it is recognized that they might be American citizens, presumably by naturalization."

*International organizations—immunities—United Nations officials—
U. N. site.*

CURRAN v. CITY OF NEW YORK ET AL. N. Y. L. J., Jan. 2, 1948, p. 16.
Supreme Court of New York, Queens County, Dec. 31(?), 1947.
Hill, J.

Plaintiff, as a taxpayer, brought an action against the City of New York, various officials, and Lie as Secretary-General of the United Nations, seeking a judgment declaring invalid the grant of lands and easements to the United Nations for the Headquarters site, the allocation of funds for improvement of the streets in the area around the headquarters, the exemption of the site from taxation, and the temporary use of the meeting place in Flushing Meadow Park. All the defendants except Lie moved to dismiss the complaint on the ground that it failed to state a cause of action; Lie

appeared specially and moved for dismissal as to him on the ground that there was no jurisdiction as to an action brought against him in his official capacity. Both motions were granted by the Court.

With respect to the motion by defendant Lie, the Court said: "Upon the return of the motion the United States Attorney for the Eastern District of New York, acting under the direction of the Attorney-General of the United States, submitted his petition, bringing to the attention of the court the suggestion of the Department of State, that the rights of immunity be granted to the United Nations; annexed to the petition is a photostat of a letter written under date of November 6, 1947 by Under-Secretary of State to the Attorney-General of the United States, stating that the Department of State allows, recognizes and certifies the immunity of the United Nations and of Lie as its Secretary-General. The petition prays that the claim of immunity requested of and allowed by the Department of State be given full force and effect and that the United Nations and Lie, as its Secretary-General, be declared immune from the jurisdiction and process of the court and that service of process upon Lie, as Secretary-General of the United Nations, be vacated and the complaint dismissed for want of jurisdiction.

"The act of the State Department in suggesting that the United Nations and Lie, its Secretary-General, are immune from process is predicated upon Articles 104 and 105 of the Charter of the United Nations, sections 2(b) and 7(b) of the International Organizations Immunities Act of December 29, 1945, Public Law 291, 79th Congress, and Executive Order 9698 of February 19, 1946, which order made the terms of the Act of December 29, 1945, applicable to the United Nations and its officials.

"The Department of State, the political branch of our government, having, without any reservation or qualification whatsoever, recognized and certified the immunity of the United Nations and the defendant Lie to judicial process, there is no longer any question for independent determination by this court (*Matter of United States of Mexico v. Schmuck*, 294 N. Y. 265, reaffirming 293 N. Y. 264).

"The judicial branch of our government follows the political branch in dealing with sovereign immunity and will not embarrass the latter by assuming an antagonistic jurisdiction (*U. S. v. Lee*, 106). Neither will the judicial branch embarrass the executive arm of the government (*Ex parte Republic of Peru*, 318 U. S. 578-588).

"The case at bar demonstrates the wisdom of the rule that such determination by the State Department is final and controlling. The complaint herein raises delicate questions pertaining to the foreign policy of the United States and to its internal processes incident thereto. To be allowed to raise such issues in a court of this country can serve but to embarrass the United States in the conduct of its relations with the other nations of the world (*In re Baiz*, 135 U. S. 403; *United States v. Pink*,

315 U. S. 203, p. 223; *United States v. Belmont*, 301 U. S. 324; *Wulfsohn v. Russian Socialist Federated Soviet Republic*, 234 N. Y. 372, p. 376).

"It follows that the court is bound to accord recognition to and uphold the suggestion of immunity presented by the Department of State, through the United States Attorney. . . ."

With respect to the motion to dismiss on the merits, the Court set forth the facts relating to the Headquarters site in New York and the legislation regarding it. Referring to the nature of the United Nations Charter as a treaty and thus as the "supreme law of the land," the Court said: "Even without further action by Congress or by the state, the effect of Article 104 would be to give the United Nations the legal status and capacity to own land in the United States. Also, that without further action by Congress or the state, the immunities 'necessary to the fulfillment of its purposes,' conferred upon the United Nations by Article 105, includes immunity from taxation." The legislation of New York with respect to the Headquarters was held valid by the Court.

** Immunity of foreign government—where not indispensable party—statute of limitations.*

FEDERAL MOTORSHIP CORP. v. JOHNSON AND HIGGINS. 119 N. Y. L. J. 391 (Jan. 30, 1948).

New York Supreme Court, Special Term, New York County, Jan. 29, 1948.

Plaintiff ship company brought suit on a contract under which defendant was to arrange insurance on plaintiff's ship, losses to be payable to plaintiff and to Mexico as their interests might appear. After the ship was lost, plaintiff sued for the entire proceeds of the insurance, alleging that Mexico had no interest therein. Defendant stated that Mexico asserted a claim for a part thereof. An order was issued, allowing defendant to notify Mexico of the pending suit. Under section 51a of the New York Civil Practice Act this notice started a statute of limitations of one year and ten days running against Mexico. Mexico having failed to intervene, plaintiff renewed the action after the expiration of the period. Mexico then appeared specially and moved that the case be dismissed for lack of jurisdiction, and that the order allowing the defendant to give notice to Mexico be vacated.

On the first motion the court held that it did have jurisdiction despite the fact that Mexico is an immune foreign sovereign, since this was an action by plaintiff against defendant in personam on a debt, rather than an action to obtain a particular thing or fund. Holding that Mexico was not an indispensable or even a proper party to such an action, the Court said "Mexico has no interest in what debt plaintiff can establish against defendant, and no . . . right to be made a party to this action." The

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court denied the second motion on the ground that the notice given had none of the "attributes or effects of process" on an immune sovereign. In so holding, the court stated that foreign governments are bound by our statutes of limitation, citing *Guaranty Trust Co. v. United States*, 304 U. S. 126.

Effect of foreign decrees—Foreign Exchange Control Regulations.

CERMAK v. BATA AKCIOVA SPOLECNOST. N. Y. Law Journal, Feb. 24, 1948, p. 678.

New York Supreme Court, Trial Term, Part XI, Feb. 23, 1948.
Walter, J.

Plaintiff's assignors had performed services for defendant Czechoslovak corporation, for which there were due as of Dec. 31, 1940 substantial sums. Plaintiff brought an action against defendant for payment, warrants of attachment being levied against a credit balance defendant then had with Guaranty Trust Company of New York. The defense was interposed that at all times involved there were, and now are, Czechoslovak Foreign Exchange Regulations in force which prohibited defendant (as a resident of Czechoslovakia) from making any payment to a non-resident of Czechoslovakia without a license from the Foreign Exchange Control authorities in Czechoslovakia and prohibited any assignment of a claim due from a resident to a non-resident of Czechoslovakia without such a license.

The court gave judgment for the plaintiff, finding that under Czechoslovakian law the defendant had a general consent to use its foreign exchange freely, and that under that law the prohibited payments or assignments were not void but merely rendered the persons violating the regulations liable to punishment. The court added: "Even if it were otherwise, however, and even if no license had been obtained, I think that Czechoslovakia's Foreign Exchange Regulations would not prevent an adjudication of defendant's liability nor a direction that Guaranty Trust Company pay to plaintiffs the credit balance it is holding. In *Polish Relief Commission v. Banca Nationala a Rumaniei* (288 N. Y. 332) it was held that similar regulations of our own country do not prevent the levy of an attachment which gives the court jurisdiction to dispose of funds subject to the regulations; and it certainly follows that foreign regulations are not to be given greater effect.

" 'The courts of no country execute the penal laws of another' (*Loucks v. Standard Oil Co.*, 224 N. Y. 99, 102, quoting *The Antelope*, 10 Wheat. 66, 123), and the general rule at least is that we do not execute, or enforce, the revenue laws of another state or country. . . .

"If the international agreements entered into as a result of the Bretton Woods Conference of July, 1944, are to change that rule, I will at least

await a decision of some appellate court blazing that trial or a case before me in which that point is briefed and decision of it is actually necessary." *

CASES NOT SEPARATELY DIGESTED:

Aliens—deportation.

Rasmussen v. Robinson, 163 F. (2d) 732 (C. C. A. 3d, Sept. 16, 1947).
United States ex rel. Schliminger v. Jordan, 164 F. (2d) 633 (C. C. A. 7th, Dec. 9, 1947). U. S. ex rel. Cassetta v. Watkins, 73 F. Supp. 399 (S. D. N. Y., Sept. 10, 1947).

Aliens—exclusion.

The City of Athens, 73 F. Supp. 362 (D. Md., Sept. 19, 1947).
Low King Yong v. Pan American Airways, 74 F. Supp. 657 (D. Hawaii, Dec. 12, 1947).

Aliens—refusal of liquor license.

Kuczek v. Kuczek, 76 N. Y. S. (2d) 86 (Sup. Ct., Nassau County, Sept. 19, 1947).

Enemy alien—removal.

U. S. ex rel. Ludecke v. Watkins, 163 F. (2d) 143 (C. C. A. 2d, July 24, 1947).

Enemy alien—access to courts.

Matoresse v. Matoresse, 140 N. J. Eq. 381, 54 Atl. (2d) 771 (Sept. 17, 1947).

Enemy property and Alien Property Custodian.

Clark v. Taylor, 163 F. (2d) 940 (C. C. A. 2d, Sept. 22, 1947).
Clark v. Edmonds, 73 F. Supp. 390 (W. D. Va., Sept. 15, 1947).
Clark v. Resinous Products & Chem. Co., 74 F. Supp. 309 (E. D. Pa., Oct. 9, 1947).
Iwazo Yamashita v. Clark, 75 F. Supp. 51 (D. Hawaii, Jan. 7, 1948).
In re Daly's Estate, 189 Misc. 680, 74 N. Y. S. (2d) 711 (Surr. N. Y. Co., May 27, 1947).
In re Saalberg's Estate, 75 N. Y. S. (2d) 707 (Surr. N. Y. Co., Nov. 17, 1947).
Chase Nat. Bk. of N. Y. v. Reinicke, 76 N. Y. S. (2d) 63 (Sup. Ct., Spec. Term, N. Y. Co., Nov. 21, 1947).

Jurisdiction—military courts and merchant seaman abroad.

Shilman v. United States, 73 F. Supp. 648 (S. D. N. Y., May 5, 1947).

Naturalization—revocation.

United States v. Arens, 7 F. R. D. 480 (E. D. N. Y., June 5, 1947).

War—duration.

Creedon v. Cloyd W. Miller Co., 74 F. Supp. 546 (N. D. Ohio, Nov. 20, 1947).

* This case appears to involve a point of conflict of laws more directly than any international law point, but it is believed that the attitude towards Foreign Exchange Control Regulations of a fellow-member of the International Monetary Fund may justify inclusion of the case here.—W. W. B.

BOOK REVIEWS AND NOTES

A Modern Law of Nations—An Introduction. By Philip C. Jessup. New York: Macmillan; 1948. Pp. xi, 236. Index. Price \$4.00.

The announcement of this volume filled me with impatient anticipation. I was so eager to be among the first to read it that I undertook in advance to write this review. By way of preparation, I got out my literary apparatus—a satchel and a quiver—and began a search through periodicals for the author's recent articles, surmising not mistakingly that they would give me a foretaste of what to expect. Having filled my satchel to over-brimming full with encomiums, my conscience stirred me to tuck into my quiver a few tiny darts to serve in need as reservations. Thus engaged, I oriented myself to the "new look" to be given to international law.

When the reward came, I plunged eagerly into the preface. All was fair sailing until toward the end of it I found myself completely disarmed by the over-generous allusion to my own feeble efforts in times gone by. Quickly closing the book, I hied myself as fast as my feet would carry me to the bank of the Charles River to dump both quiver and darts into the flowing stream. Then I devoted several days to an effort to recover a quantum of judgment and objectivity with which to read the text. I shall not take it amiss if you, reader, deem that quantum insufficient for a complete release from the spell cast upon me.

A first reading of this charming volume left me with a deep sense of gratitude for the high achievement. It also led me to cherish a hope—seemingly warranted by the words *An Introduction* on the title page—that it is but a forerunner of a continuing "systematic reëxamination of the traditional body of international law." This is more than a "bare introduction," however. Though the author describes it as "fragmentary," it breaks many rusty chains, it opens new windows to the light, and it presents a challenging vision of what conscious effort might accomplish to shape international law for meeting the needs of an organized world. It should serve both as a guide to the specialist and as an inspiration to the amateur. So catholic is the author, so gingerly does he tread on toes, that solace is held out even to the incanting crackpot. The casual reader will feel the touch of a literary artist, and he will not fail to appreciate the brilliance behind it—brilliance born not merely of high purpose, but also of that mastery which only wide experience and years of lonely scholarship can engender.

A tractate rather than a treatise, the volume is "written *de lege ferenda*." It sustains a distinction "between the existing law and the future goals of the law." To explain the latter "two points in particular are singled

out as keynotes of a revised international order" (p. 2). The author begins by calling them "possible bases." Then he calls them "postulates." Later he proceeds on the hypothesis that they have been accepted. In the end they become *credos* regarded as essential to the modernization of the law. The progression is reminiscent of the account in Lytton Strachey's *Eminent Victorians* of Chinese Gordon's mercurial shifts on his journey from London to Khartoum.

The first "point" is that "international law, like national law, must be directly applicable to the individual" (p. 2). Unlike Georges Scelle, Mr. Jessup does not deduce this conclusion from a juridical logic of his own construction. Nor does he elaborate an argument to sustain it. As he eschews any debate a reader may have difficulty in explaining the "must." Yet no fetich is made of it. Instead an honest attempt is made to show how in various situations a possible law of the future could weave it into a skein of practical value.

The second "point" is that "there must be basic recognition of the interest which the whole international society has in the observance of its law" (p. 2). From this an insistence follows on the "interdependence" of States and on the "community interest" in international law. Far from being novel, the idea rings out in much of the literature of the past fifty years. It dominated the thinking of the group of Americans (of whom Mr. Jessup was one) who drafted the formulation of "The International Law of the Future," published in 1944. What is new, however, is the specific application of the "point" in a variety of international situations.

The limits of this review restrict the writer to a general appreciation of the way in which the two "points" have been applied.

As to the first point, the author gave himself wide rein. "For the purposes of this context," he says, "the law of nations must be defined as applicable to states in their mutual relations and to individuals in their relations with states" (p. 17). Perhaps this is too broad. This reviewer is at the moment involved in a relation with a state. He is engaged in the painful process of contesting an income tax claim by the Government of the United States. What a boon it would be if he could find in *A Modern Law of Nations* some applicable principle which would increase his deductions! Yet the quest has been in vain. At one stage of the presentation (p. 127), the author seems to say that under Article 102 of the Charter an agreement between a Member of the United Nations and an individual may be an "international agreement," subject to the Member's "obligation to register" it with the Secretariat of the United Nations. At another stage, he would make individuals who "resort to any form of violence inspired by hostility to another [sic] people or government," such for instance as participation in a mob or boycott, amenable to prosecution for "illegal acts" in an "international forum" (p. 182). Naturally, therefore, he hails the General Assembly's resolution on genocide as a "major step"; and he does

not hesitate to convert the "purpose" of the United Nations "to achieve international coöperation . . . in promoting and encouraging respect for human rights," into a legal obligation of the Member States. Yet without offering much analysis, he seems to have some qualifications in his appraisal of the Nuremberg trials.

On the whole, this reviewer is led to wonder whether a few of the applications of the first point may not be slightly extreme. If that conclusion were drawn, it might lead one to question the value of some of this part of the study. Conceptualism can be a wayward mistress; and a slavish loyalty to the concept of the inclusion of individuals might be as reproachable as a strict adhesion to the concept of their exclusion. Without starting with any broad generalization as to the applicability of international law to individuals, one might content himself with a readiness to face the practical problems which present themselves, and to devise for them the solutions which wisdom may dictate.

The applications given to the second point do not engender any doubts. Here it is obvious that the author feels himself on surer ground. He states a convincing case for placing the recognition of states in a "mold of common action" (p. 50)—a reform long overdue. His attack on "the most dramatic weakness of traditional law" is directed against states' freedom to resort to force. In exciting fashion he centers his insistence on the provisions of the Charter but he does not fail to take account of their weakness as well as their strength. The chapter on "Legal Regulation of the Use of Force" is in itself a *tour de force*. It is followed by a fecund discussion of "Rights and Duties in case of Illegal Use of Force," which is a fitting sequel to the author's draft on rights and duties of states in case of aggression, published by the Harvard Research in International Law in 1939.

So much for the development of the two points. The volume is of broader scope, however. The specialist will find in it pregnant analyses of a host of additional problems. Special mention should be made of the lucid concept of international organizations as subjects of international law. The reviewer could have been happier only if more attention had been given to processes by which the strength of the law of the future can be buttressed—especially the universalization of the compulsory jurisdiction of the International Court of Justice, and the vigorous pursuit of the traditional process of international legislation. The latter topic has never found too much hospitality among the oracles of Morningside Heights; and the chapter on "the Law of Contractual [*sic*] Agreements" does it but scant justice.

Yet I must not make the usual complaint of reviewers that the author has not done what he did not set out to do. Having to meet a printer's dead-line, he moved in the grand manner. I shall only add a prayer that the author will not let the curtain fall until this play is done.

MANLEY O. HUDSON

Of the Board of Editors

Annual Digest and Reports of Public International Law Cases, 1919-1942 (Supplementary Volume). Edited by H. Lauterpacht. London: Butterworth; 1947. Pp. xxvi, 550. Table of Cases. Index. 55 s.

This volume is a very valuable and welcome addition to the series of the *Annual Digest* for two reasons. The first is that it adds 171 decisions omitted from prior volumes on account of inaccessibility or for other reasons. The second is that it contains a consolidated index and consolidated tables of cases reported and cited for all of the volumes from 1919 to 1942, inclusive. It goes without saying that the index and tables will add greatly to the convenient use and accessibility of the whole series. It may be noted in passing that the generous aid of the Carnegie Endowment for International Peace had made the publication possible, and that the contributor for the United States is Professor D. Beatrice McCown of Washington, D. C.

The new cases reported in this volume are chiefly from the United States, France, and Holland, in order of the number reported. There are a few cases from other countries—mostly European. There appears to be none from Spain and the Spanish American countries, or from the Balkans and Soviet Russia, or from the Far East, except Australia. The cases therefore are drawn almost exclusively from the group of countries known as the western democracies. The decisions are classified to correspond with the prior volumes. Only one decision of an international court, the *Cadenhead Case*, is reported.

When the cases reported are studied analytically it is sometimes difficult to evaluate them as authoritative precedents in international law. The reader may well query whether decisions by inferior courts such as the Cantonal Court of Amsterdam and the like, are of much weight in establishing the law and practice of nations. The question arises at once as to the judicial standing of such a court. The same may be said of the Peoples Courts in Germany during Nazi regimentation.

In this connection reference may be made to the decision of the District Court of Groningen, Holland, in 1938, in the case of *Public Prosecutor v. O.*, digested as Case No. 5. In this case the accused was prosecuted for using insulting language regarding Adolf Hitler, Head of a Friendly State, in a public cabaret show and was found guilty. The character of the court is not indicated nor the basis of the decision. There have been two or three similar decisions in the 1935 and 1938 Annual Digests which rest on local criminal laws. Such laws appear to be purely optional on the part of the government in the absence of treaty obligations and it may be queried whether even a general practice in this regard would constitute more than merely a substantial identity of municipal systems of law rather the creation of a rule of customary international law. It is difficult to see in such decisions a basis of "Public International Law" in the traditional sense. Witness the vituperative utterances recently so common

in the sessions of the United Nations and Council of Foreign Ministers and in the public press.

The technical reader will miss in some of the decisions of superior courts, particularly on appeal, an indication of the vote of the judges. He may also note that cross references in some instances seem to refer to matters which are not evident in the digest of the case. For example, the *Cadenhead Case* (No. 92) is referred to on pages 178 and 195 as involving "absence of non-discrimination" although this point is not expressly covered in the digest of the case.

These comments are not made in a spirit of criticism nor meant to derogate from the credit and esteem which must be given to the *Annual Digests*. However, the originals of many decisions are not available to most readers and such questions cannot be readily looked up. Nevertheless, all practitioners and students must pay grateful homage to the learned editor and his assistants for their unusual contributions to the science of international law.

L. H. WOOLSEY

Of the Board of Editors

A Manual of International Law. By Georg Schwarzenberger. London: Stevens; 1947. Pp. 1, 428. Tables. Appendices. Index. 25s.

The first question asked in the preface of this volume is "How much of classic international law has survived?" The answer is given in the next 155 pages of text under the title "Elements of International Law" (Part One).

The object is to state in the text of Part One the principles of international law currently in force, indicating the changes wrought and trends evident during the present century. A final chapter deals with patterns of international organization which have been advanced and applied down to the United Nations, and lays down the requirements of the pattern for a World State. It may be surprising to the general reader that, contrary to public estimate, so much of the classic international law has survived the cataclysms of the First and Second World Wars. It is tradition that law is of slow growth and has its roots deep in the culture and customs of mankind and though it may be warped by social upheavals, the fundamental qualities still run through and influence human development even in modern times. So it appears to be with international law.

This volume is prepared chiefly as an educational aid to the student or layman making his first acquaintance with the system of international law. In a manual of this small size, as the author acknowledges, the subject must be presented as "a synopsis rather than a panorama of the law of nations." The reader who desires to go further into the subject may do so by using the appended Study Outlines for each chapter (Part Two).

The Study Outlines (190 pages) consists of statements or questions, of a thought-provoking nature, followed by a list of pertinent decisions, treaties, and authorities which may be consulted. The questions are of a stimulating practical sort such as Resources of the Continental Shelf, Moscow Declaration on War Crimes, Nuremberg trial and the like. This part of the volume contains excellent bibliographic material, but it is not always easy to identify the particular subjects to which the material relates.

The author takes pains to point out that his is the inductive approach to international law. "The generalizations found in this Manual are based primarily on the jurisprudence of international courts and tribunals and supplemented where indicated by reference to Anglo-American State practice."

Any person interested to learn of the sources, growth, and function of international law could not do better than to read the text and follow through with some of the literature listed in the Outlines. He will find here all the material he needs for either a superficial or an intimate study of the subject. The author may be congratulated on this method of popularizing a subject which so many believe is of little authority in the world today.

The appendices contain the Charter of the United Nations and the Statute of the International Court of Justice.

L. H. WOOLSEY

Of the Board of Editors

The Crisis in the Law of Nations. By H. A. Smith. London: Stevens; 1947. Pp. 102. 7/6.

The situation of international law has recently attracted philosophical discussions by many writers, including E. D. Dickinson, Philip Jessup, Josef Kunz, and Herbert Briggs. The present volume, mainly composed of lectures given by the author at the University of Istanbul in November, 1946 is in this *genre* and on the pessimistic side.

Smith's central thesis is that international law can only rest on a high moral sense among statesmen and peoples. Efforts to build international organization and institutions of enforcement leave him cold. The League of Nations was, he thought, bad, because too much committed to the *status quo*, but the United Nations he thinks worse, because it gives unlimited power to the great powers if they can agree. The Charter, he thinks, accepts the Nazi and Communist doctrine "that law is merely the instrument or agency through which those who hold supreme power make known their will" (page 101). Two world wars and the repudiation, in his opinion, of all morality by the Nazis and the Communists has destroyed the conscience of much of the world and left civilization with no generally accepted moral standards.

The loss of this essential unity of civilized men, the disruption of this common foundation, makes it impossible for the work of Grotius to be repeated today. No man, whatever his genius, can now hope to write a book upon the law of nations which will be accepted as setting an agreed standard of conduct for the rulers of our present world. For the present, at least, there is no common foundation upon which he can build, since there is no common agreement upon a divine or "natural" law to which all human law and all political power, even the mightiest, is bound to conform. . . . In a word, the world cannot be saved except by a common faith. At this point it will be obvious that the mere lawyer has reached the limit of what he can usefully say (pages 100-102).

Professor Smith seems to hold that "natural law" asserts the principle that agreements ought to be observed, and that the authority of custom rests upon general agreement (page 38). In this he approaches the opinion of some positivists who regard *pacta sunt servanda* as the fundamental norm, differing from the opinion of other positivists like Oppenheim, who regard the authority of custom as fundamental, and derive the rule *pacta sunt servanda* from custom. In practice, however, Smith permits principles of natural justice which appeal to him to override both agreements and custom. He considers it natural justice that a belligerent be free to starve its enemy's population irrespective of traditional rules regulating blockade and continuous voyage (p. 42, 59); to sink all enemy merchant vessels at sight, although such action is prohibited by treaty (p. 62); and to destroy by aerial bombardment enemy cities because it may be assumed that a large part of the population in modern war is engaged in war-like activities and so is a legitimate target (p. 76). On the other hand, he considers it against natural justice to try leaders of a nation which the world has generally recognized to have initiated wars in violation of treaty obligations, and to condemn those who, after due process of law, were found to have been responsible for such initiation of war. His diatribe against the Nuremberg Trial, which a footnote tells us was not included in the Istanbul lectures, fails to consider the argument given in the tribunal's opinion on the *ex post facto* issue (p. 46).

Natural justice, as presented by Professor Smith, appears to resemble the early equity, which according to Selden varied with the length of the chancellor's foot.

In spite of the confusion which the book develops as to the nature of the moral standards which ought to be accepted, the way in which such standards might be accepted, and the procedures by which they might be maintained, the author makes some wise remarks on the changes which have taken place because of modern inventions and the need of adapting law to these changes. Although aware of the obsolescence of much of nineteenth century international law under conditions which tend to make war total and neutrality a poor risk, the author offers few constructive

suggestions toward improvement of the situation. He is so out of sympathy with the efforts in this direction pursued through the United Nations that he is incapable of discussing them objectively. This attitude, however, leads him to make some penetrating remarks upon the difficulties of solving the problem.

QUINCY WRIGHT

Of the Board of Editors

La Responsabilidad Internacional del Estado y la Validez de la Clausula Calvo. By C. S. Gutierrez. Mexico: Facultad Nacional de Derecho y Ciencias Sociales; 1947. Pp. iv, 88.

The disclaimer of originality found in this monograph is completely disarming. The author also takes conflicting views of the renunciatory Calvo Clause. In the first part of the study he seems to adopt the Western view that responsibility lies for a denial of justice, and he follows Freeman in the restrictive definition of the Clause. In the second part of the book, however, he takes the Latin American view that the renunciatory Clause means not only the exhaustion of local remedies but also a denial of diplomatic protection. The study is carefully done and will repay examination because the author enlists the views of different authorities on every branch of the subject. Strangely enough, he does not appear to have seen the passage between Sr. Cruchaga Ossa and this reviewer at Lima, Peru, in 1938, a controversy resumed at Washington in 1940. Both are printed in the Proceedings of the Society. The author takes a sensible view in the end of what is American international law. The Drago doctrine was purely academic because it never had any application in international relations. It led to the Porter Proposition at the Hague, from which now most countries have withdrawn. The author's work encourages further studies from the Latin point of view. He is less troubled by concrete cases than he should be. He examines mainly the doctrines advanced by various authors, and this alone is likely to be misleading.

EDWIN BORCHARD

Of the Board of Editors

Immunities and Privileges of International Officials. The Experience of the League of Nations. By Martin Hill. Washington: Carnegie Endowment for International Peace; 1947. Pp. xiv, 281. Index. Annexes. \$2.50.

The present volume, eighth in the series of Studies in Administration of International Law and Organization, is devoted to the immunities and privileges of international officials, especially of the League of Nations and of the Permanent Court of International Justice. The author was associated with the League administration for nearly twenty years. The Cove-

nant provided diplomatic privileges and immunities for representatives of Members of the League and officials of the League when engaged on the business of the League, but did not further define who were to be considered League officials nor the scope of the term "business of the League." The Statutes of the Permanent Court of International Justice also left open certain questions of interpretation. This necessitated a series of detailed agreements with Switzerland and with The Netherlands, respectively, which are given here with explanatory comment. A brief chapter on the status of officials of the International Labor Office in Canada is followed by the author's conclusions.

Undoubtedly the most significant part of the book is Chapter X, dealing with the bases of the post-war regime relating to international officials. These depend in great measure upon the experience under the League. Certain tendencies to modify League practice are noticeable, however. Instead of a general grant of "diplomatic" privileges and immunities, limitations are expressly provided and the scope of privileges to be accorded by any government to its own nationals is defined.

Valuable annexes, some never heretofore published, consist of selected documents, including the General Convention on Privileges and Immunities adopted by the General Assembly in 1946, the draft convention between the United Nations and the Government of the United States; and many others which, together with the text, make this a timely book of convenient and authoritative reference upon a subject of rapidly expanding importance.

ARTHUR K. KUHN

Of the Board of Editors

Das Kriegsschadenrecht der Nationen. By Hans Joseph Cahn. First Volume. Zurich: Europa Verlag; 1947. Pp. cviii, 336. Fr. 45.

The book under review is the first volume of an ambitious undertaking by a German refugee writing in Switzerland.* The author has set himself the task of founding and developing a new discipline of law which, in consequence of the two world-wars, is and will be of the greatest and world-wide importance, namely the law of indemnity for war-damages.

The author has studied the problem from antiquity to the present day and in all the nations. His bibliography of 92 pages is extremely valuable; it gives not only the whole literature, but all the relevant international treaties and a complete table of national statutes and decrees in all the countries. In the first volume the author gives the development of the law concerning indemnity for war-damages until the outbreak of the First World War. The second volume will give the law concerning indemnity

* Now in this country.—ED.

for war-damages of the First and Second World War in all the belligerent and neutral countries.

On the basis of this historical study and of the comparative study of all the national legislations the author opens this first volume with a general theory of the law concerning indemnity for war damages. It is not possible to go into details within the framework of a book-review. Suffice it to state that the author makes an effort to conceive this whole law of indemnity for war damages as a system, to define its concepts, and to formulate the rules of this law. The book is, both in consequence of the bringing together of an immense material and in consequence of the study made of this immense material and of the theoretical results reached, of very great importance.

While this first volume deals primarily with municipal law, it is, nevertheless, of great interest to the international lawyer. For the very concept of "war-damages" is in intimate contact with international law, with the laws of war and neutrality in their many forms whether measures against the person or the property of alien enemies, or damages by war-like acts, invasions and military occupation and so on. It is obvious that the third volume of this important work, treating the indemnities in the wake of exchanges of populations, international responsibility for violation of the laws of war and for permitted encroachments of property, as well as the history and contents of the so-called "reparations," will deal directly with international law.

JOSEF L. KUNZ

Of the Board of Editors

La Garantie Internationale des Droits de l'Homme, d'après la Charte de San-Francisco. By René Brunet. Geneva: Grasset; 1947. Pp. 384. Fr. 10. 50.

The current efforts to establish international rights and duties for the individual is a revolutionary movement in international law; and the success of such efforts would mean changes in domestic law and in political and legal philosophy. Many new lines of thought are now being opened to the political scientist and to the legal philosopher.

Professor Brunet, in his introductory words, notes that the current desire of human beings for security—which tends to make them rely more heavily upon the state—constitutes a danger to individual liberty, and he suggests that the only possible protection against this danger is to be found in international law. In two chapters, amounting to about a third of the book, he traces the developing popular recognition of the fact that the state is inadequate to give to the individual the protection which he needs, and the consequent appearance in the Dumbarton Oaks

Proposals—for the first time in any official document—of a stated obligation on the part of the community of nations to promote the rights of man.

The debates at San Francisco over the various provisions dealing with human rights are summarized, and the meaning of the text adopted is examined with some detail. The "domestic questions clause" [Article 2(7)] is obviously of great importance in this connection, for the legal position of the individual within a state has been, for the most part, regarded as a domestic matter. Professor Brunet interprets the clause to mean that it leaves decision to the state concerned as to whether or not it is a domestic question; that since no authoritative organ of interpretation was provided, each organ and each Member is free to interpret the clause for itself; consequently, the UN can do nothing, not even make a recommendation; that the only way in which any UN organ can enter the field is for the Security Council to decide that a threat to the peace exists; in general, therefore, the provisions of the Charter concerning human rights are no more than noble maxims.

It seems to the reviewer that these conclusions are technically correct. The author goes on to say, somewhat inconsistently, that by Article 56 a Member must do what it can do alone, and with the UN what it can not do alone; and that, consequently, Article 56 lifts Article 55 out from under the domestic questions clause. Similarly, he says, Article 62 would have no meaning if the UN could not investigate within a nation, and the Economic and Social Council is given a separate power of recommendation concerning human rights; therefore, these matters also are not covered by Article 2(7). This does not seem to assure an adequate way of escape from the words "Nothing contained in the present Charter shall authorize the United Nations to intervene. . . ." It is of course a self-contradictory and nonsensical situation that obligations heavily emphasized in one part of the Charter should in another part of the same document be forbidden to be carried out. In practice, organs of the United Nations have proceeded to study and promote the development of human rights as if the domestic questions restriction were not there.

Professor Brunet thinks that the Declaration of Human Rights should be adopted as part of the Charter by the process of amendment, a process much better than that of making a treaty which would be binding only upon those states which ratified it. He devotes some fifty pages to discussion of the specific rights to be included, and has a final chapter on Guarantees. The protection of the rights stated is a duty which falls in the first place upon the state in question. To insure that domestic law conforms, the Declaration should be made a part of the Constitution of each state. The United Nations should be an agency of appeal, and to this end, the Human Rights Commission should be a permanent organ for surveillance and for control. He thinks also in terms of an authoritative agency to be established, of regional commissions, and of an international

court of human rights, before which the individual, as a subject of international law, could bring his complaints against a state, even against his own state.

Professor Brunet realizes that the various propositions which he has made will be slow in gaining acceptance; he thinks that a ratified statement of rights and the establishment of a court should be the first objective aimed at. Whatever the possibilities, the author has provided us with a useful exposition of the problem, especially as it relates to the means of action under the United Nations.

CLYDE EAGLETON

Of the Board of Editors

Les Règles de Conflit de Lois dans les Traités. By Robert Plaisant. Paris: Sirey; 1946. Pp. viii, 476.

This work, which received the Dennery Prize of the Paris Law Faculty in 1946, is an original and comprehensive contribution to the study of the Conflict of Laws as regulated by treaties. Heretofore it has been customary to consider these texts only in connection with special fields. If there were any doubt of the close relationship between the conflict of laws and general international law, this author has succeeded in dispelling it. At the very outset he insists that the object of the science of conflicts is to facilitate international intercourse in a framework of law. The rational development of such a science is both the first consequence and the necessary condition of international life. Written laws regulating conflicts of law in national legislation cover only a small portion of the field. This leaves the development of most rules to the judges whose many other obligations unfit them to give proper attention to the international problems of issues pending before the courts. "Thus a law whose object is universal is made by district courts." The author proposes a wide extension of the use of international conventions, bilateral and multilateral, to rectify this disproportion between the importance of the problems and the instruments for their solution. Conventional rules are the latest development in the field and are necessary to remedy the imperfections in national rules and to promote international cooperation.

This in brief is the thesis in support of which the author has made a thorough survey of two concepts lying at the base of international law. As these concepts determine the nature of conflicts, he uses the concepts as a means of dividing his material. The reader may be somewhat confused by this unorthodox classification, but the author proceeds then to his second division, dependent upon the first, to wit the creation of rights and the effect of such rights in foreign countries. Thus by intermediate stages he leads to his main topic which is the modification of national law both as to the creation of rights and their effect abroad through conven-

tional agreement. Here he follows a more familiar pattern. He deals first with general subjects such as qualifications, *renvoi*, public policy, acts in fraud of the law, and others; then with the particular fields of conflict, including not merely family relations, contracts, and torts, but also intellectual property, patents, copyright, and trademarks.

Upon all of the above-named subjects the author has discovered some treaty regulations, multilateral or bilateral, comprehensive or fragmentary, as the case may be. The various Hague conventions relating to guardianship, marriage, divorce, and succession, the Geneva conventions relating to negotiable instruments, the Paris Union relating to industrial property, the Bern Union relating to literary and artistic property, the Geneva convention relating to the employment of seamen, the Bustamante Code of Private International Law, and many others are subjected to close analysis and criticism.

Whether the author's ideas for a more extended use of international conventions in the solution of conflicts of law are to be realized will depend very largely upon the political drift of the times. We believe that this method is primarily dependent upon the existence of national systems of free enterprise and individual rights, interpreted and applied by an independent judiciary. The author has written a scholarly and original work but the outlook for the negotiation of further treaties dealing with conflict of laws on subjects which predominantly relate to private rights is not a hopeful one. If there is to be further political disintegration within the international community, the future of the author's plan lies in the lap of the gods.

ARTHUR K. KUHN

Of the Board of Editors

Principales conflictos de leyes en la América actual. By Jesús de Galíndez. Buenos Aires: Vasca Ekin; 1945. Pp. 336. Appendix. Index. \$5.00.

The author of this book, a Basque refugee from Franco, is Professor of Juridical Science in the Diplomatic and Consular School of the Dominican Republic at Ciudad Trujillo, and has written numerous books and articles both on legal subjects and Basque problems, which were published in pre-Franco Spain and, later, in this hemisphere.

The main part of the book describes the instances that give rise to a "conflict" of private laws as well as those governing nationality, and the, in the main, inadequate solution offered by the various legal systems. Most, but by no means all, of its discussions are devoted to American, particularly Latin-American, conditions. The chief value of the book lies not so much in its dogmatic parts, describing the law as it is by giving merely a very broad survey, but in its views *de lege ferenda*, which form the backbone of the work. The author rejects as impractical and nationalistic the Euro-

pean and Latin American "statutory" theory of private international law even where it is mitigated by Savigny's doctrine. Relying on many authorities from Vitoria to the Bustamante code, he extols the chiefly Anglo-American "territorial" principle, *ius soli* in the broader sense of the word, which he represents as the only system fitting for a New World both in the geographical and present-day political sense of the word. Without it there can be no agrarian or other social reform, since many of the owners of large estates or corporations are frequently foreign citizens, such as the *Norteamericanos* in Central and South America or the Hungarian aristocrats in Rumanian Transylvania between the two world wars. "The foreigner is the *latifundium* owner, but the workers are citizens." This does not mean that the author is in favor of discrimination against foreigners; but there ought to be none in their favor, either, by applying the law of nationality or domicile to absentee owners. Needless to say, the author is a strong advocate of the Calvo-Drago doctrine, whereby foreign citizens must not seek diplomatic intervention in support of any claims, including those for the restitution of expropriated property. I believe the author is right, but of course this is a "meta-juridical" question, to speak with Kelsen, the answer to which depends on political conviction rather than legal analysis.

An interesting part of the book deals with fifth columnism, which the author proposes to treat as an international crime in analogy to "terrorism" as established by the Third International Conference for the Unification of Criminal Law (Madrid, 1933). He concedes, however, the difficulties in defining this conduct. After all, he admits, the Snake worked on Eve a long time ago as a fifth columnist for the devil. . . .

The appendix (pp. 186-333) contains a selected bibliography, classified and arranged according to the chief subjects of private international law. Far from being perfect—the bibliography is neither always up to date nor does it invariably list the best treatise on a particular point, or its most recent edition—it is nevertheless a valuable compilation of some of the most important writings on public and private international law.

All in all a brave and idealistic book.

REGINALD PARKER

Columbus University

Recueil de Lois modernes concernant le Droit international privé. By E. M. Meijers. Leiden: University Press; 1947. Pp. viii, 100. Fl. 4.25.

Collected by the renowned Dutch authority on private international law as a convenient handbook for his students, a number of twentieth century legislative provisions on that subject are presented in this book for the attention of jurists. Germany, Greece, Italy, Liechtenstein, Poland, Switzerland, China, and Siam are included; South America is represented by the

Montevideo Treaty of March 19, 1940. A brief extract from Mancini on *renvoi* is appended, since that author "is oftener cited than read"; and also there is included, as proof of growing sentiment in favor of the rule of domicile, a proposal submitted to the French government in 1939 by a group of eminent jurists. Professor Meijers remarks that it is countries of secondary political importance that draft their rules on the conflict of laws with greatest care; and that it is the tragedy of our time that while governments emphatically declare every day that our civilization can be saved only by international collaboration, their own acts everywhere raise more and more insurmountable barriers thereto. Convinced that efforts to attain universal agreement by treaty upon the basis of nationality have failed, Professor Meijers suggests that the time may have come to attempt a collective solution on the basis of domicile. Nevertheless he doubts the effectiveness of such an effort, at the present time, since the support for a rule of domicile comes from nations opposed to easy naturalization or fearing the continuance of cultural connection between immigrants and their country of origin, though desiring to attract them. Nations likely to suffer too great diminution of their population by emigration would probably, on the other hand, because of similar considerations, support the rule of nationality. Hence for the time being it may be better to study the diverse tendencies of the legislation in force in individual countries than to press for the premature conclusion of a collective treaty on the basis of the rule of domicile. Such study will be facilitated by this book.

EDWARD DUMBAULD

Department of Justice

Rediscovery of Justice. By F. R. Bienenfeld. London: George Allen & Unwin, Ltd.; 1947. Pp. 263. Index. 15/-.

In this volume the problem of international order and justice is analyzed in terms of impulses observable in human nature beginning in the nursery. A theory of the relativity of natural law is presented, and relative justice is seen as possible in national or international society through a balancing of the fundamental desires for authority, individualism, social coöperation, and self-determination. In one of the most stimulating sections of the book the author considers seven principal approaches to the problem of order and authority—the Nazi, the Fascist, the British, the American, the Russian, the Chinese new order, and the Indian movement for independence. Considerable attention is given to the central problem of the United Nations Organization, and a suggestion of a Minimum Bill of Rights which would take into account, with respect to each human being, "the state of cultural and social evolution reached in his country" (p. 232).

The treatment of the subject is in no sense narrowly legalistic, although there are many references to constitutional law as well as to natural law

and natural justice. There is no specific reference to Montesquieu and his idea that all law is relation, Montesquieu being mentioned only in connection with the separation of powers principle (p. 147). "A Law of Nations," the author suggests, "and the execution of that Law by a supreme international authority, may become a reality" (p. 100). Dr. Bienenfeld finds some indications that the globe will be divided into spheres of influence by regional arrangements, the leadership in each to be in the Great Power representing the conception of human rights suitable to that region (p. 231). The United Nations Organization is seen as "but a feeble attempt to give expression to the undeniable fact that without understanding and tolerance, without sacrifice and renunciation, without solidarity and fellow-feeling, humanity is doomed to perish" (p. 239).

ROBERT R. WILSON

Of the Board of Editors

The International Problem of Governing Mankind. By Philip C. Jessup. Claremont: Claremont College, 1947. x, 64 pp. \$2.50.

This little volume might better be called *Observations on International Relations*, for the author brings together various criticisms of the impracticability of now inaugurating world government and his own analysis of the United Nations Charter. The two contributions consist of miscellaneous thoughts on the subject. The author shows commendable control of the material. He was an advisor at San Francisco. On the other hand, the failures of UN and the inability of the Military Staff Committee to reach agreement do not add to the prospects either of UN or of world government. The author has more faith in the UN than does this reviewer. For the author's information, it may be said that all leagues or confederations, of which there were many before the League of 1919, for which he has an ecstatic respect, were the object of struggle for control by competing powers. Since the United States undertook to control UN, it is natural that Soviet Russia, which has a bad record anyway, should use the veto power to vindicate its sovereignty. Many nations are far from having reached that stage yet. While war admittedly is now an unadulterated catastrophe, one can find very little relationship to peace in the UN organization. The Palestine issue puts the Military Staff Committee to a test. Russia wants no American troops there—the United States no Russian troops. Perhaps some nation will volunteer to send its own troops to enforce the judgment of UN. Otherwise UN must be acknowledged to be the failure that most observers now find. It is a sad commentary that bringing nations together has increased the chances of diversity and not improved the chances of agreement. The reasons are obvious. A nation uses the forum for the hurling of epithets. It is difficult for a nation to withdraw from a position openly assumed. Indeed, it forecloses the possibilities of compromise.

Our ancestors found this out years ago. Woodrow Wilson knew too little of history to appreciate the facts. Now we are stuck behind a doctrine which doubtless must be carried through to the bitter end.

EDWIN BORCHARD

Of the Board of Editors

A Foreign Policy for the United States. Edited by Quincy Wright. Chicago: University of Chicago Press; 1947. Pp. x, 405. Appendix. Index. \$4.50.

The growing number of books on American Foreign Policy is indicative of the lively interest in the subject now felt in all sections of the population. It is also, however, a fairly significant index of the concern that is felt in all quarters over the present state of international affairs. The present volume, a record of the Twenty-Second Institute of International Affairs held under the Norman Wait Harris Memorial Foundation, held at Chicago University in July, 1946, expresses that concern quite effectively. In addition to formal lectures it includes statements by round-table leaders and extracts from the discussions. The latter make the reading more interesting.

The large ground covered is divided into five sections: Great Powers, General Security, Regional Policies, International Economic Policies, and International Informational Policies. The principal speakers on these subjects were William T. R. Fox, Leo Pasvolksy, Joseph W. Ballantine, Clair Wilcox, and Kenneth Holland. The list of other well-known participants is too long to be included here.

The current political situation is characterized by Professor Fox as dominated by the two great powers, the United States and the Soviet Union. Can peace be maintained in a "bi-polar" world? Professor Fox seems to think so. The two-party or bi-polar system in the United States, with a large floating vote sandwiched between the Democratic and Republican parties, has worked pretty well. Using this as an analogy he argues that given certain conditions, a similar "flexible, but peaceful, balancing of powers" is possible in a bi-polar world. The conditions are first that the United States endeavors to maintain an "in-between world" and a "belt of frontiers" between itself and the Soviet Union, and the second that the balancing process should "go on within, as well as between states." The in-between world would include Sweden, Switzerland, Germany, and Austria. The belt of frontiers would include Eastern Europe on the Russian side and Western Europe on the American. Similarly, in the Near East and in Asia "American diplomacy should oppose the drawing of a fixed line of demarcation between the Soviet and the non-Soviet worlds."

It is perhaps no unfair simplification of Professor Fox's thesis to say that if both the United States and the USSR practiced a policy of self-restraint

peace would be maintained and that a tightening of the situation would occur if they pursued no such policy. But then a policy of self-restraint has always maintained peace and its abandonment always resulted in war. What makes the two-party system work in the United States is not merely the existence of the in-between vote but the Constitution and the national government as well as the acceptance by both parties of the principle that the party in power should not annihilate the party in opposition. There is little evidence that we have reached or even that we are approaching that civilized state of affairs in international politics. Hence the bi-polar system in international relations may not work quite so well as it does in the domestic affairs of the United States. It is not a very satisfactory substitute for a system of collective security.

On the latter subject there are some enlightening remarks by Dr. Pasvol-sky. He warns us against regarding the United Nations as "a panacea for all our ills" and affirms, what will be conceded readily, that "it is not a panacea for war." What will not be conceded with equal readiness is his claim that "it promotes the creation of new and higher standards of national policies." No doubt any student of the Charter will admit that it sets certain standards, higher standards than prevailed in the past. But have those standards yet been generally grafted upon the national policies? The answer is probably in the negative. And the reason for that is precisely, as Dr. Pasvol-sky points out, the fact that the United Nations "does not supplant national policies" and that it "cannot rise above the level of the national policies of its member states." There is no collective security in the United Nations and that means, in simple language, that there is only a very limited opening for enforcing the higher standards prescribed by the Charter for the conduct of its members. There is sufficient room for misconduct and insufficient machinery for making nations behave themselves in accordance with the principles which they have assumed.

It should be perhaps no cause of surprise that references to "what used to be called international law" (the choice of words is Mr. Hazard's) were extremely scarce at Chicago. It was mentioned, according to the Index, only in connection with the control of atomic weapons. There Professor Brodie made the point that in the past nations were content to regard violations of international law as improbable. What is now needed—Mr. Baruch made this abundantly clear—is an international law whose violations are impossible. How do we make violations of the atomic prohibition practically impossible? Mr. Baruch supplied the answer: by eliminating the veto from Chapter VII of the Charter, in other words, by establishing a system of collective security. It does apparently make some difference whether we have it or not, although Professor Fox and Dr. Pasvol-sky showed some skepticism on that score. To them it makes apparently little difference whether the overwhelming coalition against the law breaking state is organized inside or outside the United Nations. The lessons of

World War II, at the outbreak of which the League of Nations was "bypassed," are seemingly not deemed relevant.

And yet it would seem to make a difference whether each state has the discretionary power to enforce international law or whether it has the duty to do so, and furthermore, whether a violation of international law concerns only the injured state or the international community. It seems that we are not yet sufficiently aware of the difference between organized compulsory and unorganized discretionary enforcement of international law. Nor are we disposed apparently to put the proper value on the salutary effect which the sure prospect of compulsory, organized, and overwhelming sanctions is likely to have on the would-be aggressor. It may not be amiss to recall here that Germany did not resort to flagrant aggression until the League of Nations had been undermined and then abandoned by its friends and until, as a consequence, its system of collective security had been rendered illusory.

Professor Quincy Wright deserves praise for a splendid editorial job. The papers and discussion reports make excellent reading and afford an enlightening insight into the problems which confront the United States in its foreign policy.

LEO GROSS

Fletcher School of Law and Diplomacy

America's Future in the Pacific. By John Carter Vincent and others. New York: Rutgers University Press; 1947. Pp. viii, 248. Index. \$3.00.

La Doctrine Américaine de la Porte Ouverte en Chine et son Application dans la Politique Internationale. By André Vince. Besançon: Imprimerie Jaques et Demontrond; 1946. Pp. 148. Appendix.

The collection of essays on America in the Pacific (lectures delivered at Wellesley under the auspices of the Mayling Soong Foundation) has the strength and weakness of all symposia: varied points of view, but no clear unity and no sustained concept or developed structure. There are articles on American foreign policy in general, on American foreign policy in the Pacific region, on particular aspects of policy, whether military, social, political, or economic, on British and Russian influences as complications, and on the significant movements in the area itself, especially the nationalist movements of all the peoples native to the region.

One note is most nearly common to all the articles. It is one of caution lest America's new and highly conscious concern for security narrowly defined cause it to ignore political considerations and thus antagonize all the peoples of the Pacific and Eastern Asia as well. American security may be of first concern to America. It is definitely not of first concern to Indonesians, Tonkinese, and Malays. They will not subordinate their

desire for national independence to America's desire to be safe from Russia and if they are required to do so America will inherit all the animosities hitherto incurred by the traditionally imperialistic Powers. There is already evident in and near Asia a disposition to look upon America as the protagonist and bulwark of the *status quo ante* of 1939 and it does not make for trust or confidence in America.

The monograph by M. Vince covers familiar ground in the treatment of the Open Door doctrine. He uses the sources long familiar to American scholars in the field.

NATHANIEL PEPPER

Columbia University

Exporting Arms; The Federal Arms Export Administration 1935-1945.

By Murray Stedman. New York: Kings Crown Press; 1947. Pp. x, 150. Appendix. Tables. Index. \$3.00.

In August, 1935, Congress adopted the first of a series of Neutrality Acts designed to prohibit arms and munitions exports from the United States to any foreign states which might become involved in war. As part of this legislation Congress required that all exports and imports of arms, ammunition, and implements of war be licensed by the Department of State and that all manufacturers, exporters, and importers of these materials be registered with that Department. Mr. Stedman in this book analyses and appraises the administrative machinery created by the State Department to carry out these functions. He also evaluates the purposes and accomplishments of munitions control, as well as its development during the period 1935-1945.

The author offers his work as a case study in public administration, using the field of munitions control as a basis for analysing various administrative techniques of the Department of State. He spent a few months in 1945-1946 working in the Munitions Control Section of the State Department, and has drawn on this experience in making his analysis. In successive chapters he discusses the organization of the unit responsible for munitions control, the procedures used in registering arms manufacturers, exporters, and importers, the procedures for licensing arms exports, the war-time developments and modifications in these procedures, the problem of enforcing arms export restrictions, and the problem of coordinating conflicting views within the State Department regarding the formulation of munitions control policies.

The experience of the munitions control unit, in Mr. Stedman's view, illustrates several typical problems in public administration:

(a) reconciling the views of geographical offices, which are primarily concerned with the effects of policies upon particular geographical areas, with the views of functional offices which, like the munitions control unit,

are inclined to approach policies from a more over-all view and from a functional rather than a geographic standpoint. This has been one of the basic problems confronting the State Department in its frequent re-organizations of recent years.

(b) the importance of avoiding any large measure of separation between policy-making and operations. From 1935 to 1941 these two functions were centralized in the munitions control unit but after 1941 became increasingly separated in the confusion and uncertainties of war-time administration.

(c) the importance of avoiding repeated and illogical shifting of an office from one part of a department to another. From 1941 to 1946 the munitions control unit suffered constantly from instability of this sort as it was moved haphazardly about within the State Department.

(d) the necessity of developing effective machinery for reconciling and coördinating conflicting views within a government department regarding policy-making. From 1941 to 1946 no adequate steps were taken within the State Department to achieve this objective insofar as munitions control policies were concerned.

Since May, 1946, the State Department has taken steps which appear to have gone a long way towards resolving the above problems. The munitions control unit has been elevated in rank and given more permanent stability as the Munitions Division in the Office of Controls. Furthermore, in order to provide a high-level policy making body empowered to reconcile conflicting views and achieve greater coördination, a Policy Committee on Arms and Armaments has been created representing the major geographic and functional offices in the Department of State interested in the subject of munitions control.

Mr. Stedman apparently wrote this book shortly after these changes were made, and before there had been much opportunity to see how well they would work. He doubts (p. 134), for example, that the new Policy Committee on Arms would be able to solve the problem of intra-department coördination, whereas in the light of actual practice for nearly two years it has proved very capable of resolving conflicting views and formulating generally acceptable policies on munitions exports. In very few situations has it had to refer cases to the Secretary or Under Secretary of State for decisions. There has also been a much closer relationship between the new Munitions Division and the Policy Committee on Arms than Mr. Stedman indicates (p. 34). Except for a very brief period after May, 1946, the executive secretariat of the Policy Committee has been located in the Munitions Division. This has had the effect of achieving unity between the policy-making functions and the operating functions which was so sadly lacking during the war years. It has also meant that the Munitions Division has taken an increasingly active role since 1946 in initiating and formulating policy.

The points just mentioned illustrate how difficult it is to describe and analyse the constantly changing procedures of government administration with complete accuracy. Mr. Stedman has, on the whole, however, produced a study which will be useful to those who are concerned with the problems of State Department organization as well as with the broader field of general public administration.

ELTON ATWATER

The American University,

The Foreign Policy of Soviet Russia, 1929-1941. Volume I, 1929-1936. By Max Beloff. London: Oxford University Press; 1947. Pp. xii, 262. Appendices. Map. Index. \$4.25.

In introducing this volume, published under the auspices of the Royal Institute of International Affairs, Lord Astor explains its dating. The first period of Soviet foreign relations (1917-1929) "is passing from the domain of contemporary history to that of history proper." So it was deemed desirable to wait until a definitive history might be possible for this period. The present volume, from 1929-1936, will be followed by another, carrying the story to 1941.

The degree of flexibility of Soviet policy when faced by new conditions has been discussed recently with reference to the consequences of the Truman Doctrine and the Marshall Plan. Would an economic recovery and political stabilization in Western Europe modify Soviet policy in the direction of greater coöperation and trade? The present volume contributes to the support of this thesis. The first chapter, in reviewing the period before 1929, emphasizes the shift in Soviet policy from world revolution to a normalizing of relations with the West after the Locarno Agreements promised stability and recovery in Western Europe. While it might have been supposed that the depression of 1929 would result in a reversion to the policy of world revolutionary propaganda by the Soviets, the exigencies of the Five-Year Plan and the rigors of "Russia's Iron Age" precluded such a development. Instead, the initiation of aggression by Japan and the rise of Hitler turned Soviet policy toward the more conservative brand of internationalism, represented by the League of Nations.

Obviously, however, this earlier period is not precisely analogous to the present. The author certainly does not draw any conclusions on the matter, but merely presents the record. The detail with which this is done sometimes obscures the general drift.

The period dealt with is divided into two parts by the year 1933, and in each relations of the Soviet Union with the West, with Germany, with the League of Nations, and with the Far East are dealt with in separate chapters. The brief chapter on American recognition and its aftermath is a useful review, although it contains nothing novel. It, however, under-

lines the contribution of Ambassador Bullitt's "ambition and impatience" to preventing more friendly relations from developing.

The record indicates considerable flexibility on the part of Soviet leaders in adjusting their policy to the exigencies of changing conditions, but by no means infallibility. The Soviet government apparently accepted the opinion of the Communist International, not supported by all German Communists, which "viewed the possibility of a period of Nazi rule with something like equanimity," perhaps because they thought it would augment class conflict in Germany or because they thought that the existing mutually profitable trade between Russia and Germany ought not to be interfered with. Beloff comments: "The miscalculation, whose depths were only revealed in 1941-42, is even now difficult to explain" (page 60).

The text is supported by numerous references, mostly to English literature, and appendices contain detailed narrations of Soviet actions in the League of Nations, in its own Far Eastern territories, in the Chinese Revolution, in Sinkiang, and in Mongolia.

While not a definitive account, the volume is a useful record of Soviet policy. International lawyers will appreciate the detailed account of Soviet interpretation of the League obligations and of its security pacts during the period 1933-36. "The whole process," writes Mr. Beloff, "welcome as it was to friends of peace outside the Soviet Union, was decidedly unwelcome to the devotees of social upheaval, for whom the changes were summed up in the title of Trotsky's book, 'The Revolution Betrayed'" (page 128).

QUINCY WRIGHT

Of the Board of Editors

NOTES

Classification for International Law. By Kurt Schwerin. Charlottesville: University of Virginia Law Library; 1947. Pp. viii, 50. Index. This is a classification scheme which has been adopted for the international law and relations collections in the Law Library of the University of Virginia. It is a revision and expansion of the *Outline of Topic Headings for Books on International Law and Relations* which was first published in Elsie Basset's *A Cataloging Manual for Law Libraries* (New York: H. W. Wilson; 1942). It expands the original classification by converting it to a decimal scheme, thereby providing for extensive growth, without attempting such detailed classification as that of the Library of Congress. In the scheme materials are divided into three broad groups: Treatises of International Law, Treatises of International Relations, and Reports and Documents. The use of the word "Treatises" in these group headings is misleading since all non-documentary materials are to be included in these sections. However, within these groups the topics included are plainly indicated, frequently explained by cross references, and in general logically arranged, although some sections are subject to question. For example,

State Succession is classed between Territory and Boundaries, rather than with Sovereignty. Moreover, the section for Reports and Documents actually constitutes a second classification, and automatically separates related source and secondary materials. As it now stands the Classification is an outline which will grow with use. Its adequacy can be judged only after it has been in operation for some time.

HELEN LAWRENCE SCANLON

*Carnegie Endowment
for International Peace*

De la diversité et de l'unification du droit. Aspects juridiques et sociologiques. By Adolf F. Schnitzer. Publications of the Graduate Institute of International Studies, Geneva. Basel: *Verlag für Recht und Gesellschaft*; 1946. Pp. 111. Index. This little book is to an extent a continuation of *Vergleichene Rechtslehre* (1945), where the same author in bold strokes painted a picture of the world's legal panorama, in the words of the late Dean Wigmore.

Here the author endeavors to show the economic and other social reasons why different countries have different laws, and what can be done, and has been done, toward unification. While he is mostly concerned with the legal conditions of the civil-law countries, the author naturally finds himself analyzing the essential differences between the law and our common law. He correctly observes that the criterion for a distinction between the two groups is not so much the difference in the contents or historic origin of the norms, but rather the different way of legal thinking. In this connection, however, the author emphasizes chiefly the existence of codes in the one and their absence in the other system, which he ascribes to a difference in methodical approach, characterized by such contrasts as exist between a formal French garden and an English park or between Kant's "abstract philosophy" and William James' pragmatism. The author overlooks that codes are by no means essential in the civil law. Apart from the primitive Bavarian and the still clumsy Prussian codes of 1756 and 1793, there were none before the 19th century. The Civil Code of German, the classical country of the civil, or Pandect, law, went into effect only in 1900, and Hungary has none to this day. Yet most of Europe, aside from Mohammedan countries, has been under the civil law for many centuries. Indeed, at the time of Kant and formal gardens the state of legal disorganization and confusion on the Continent was worse than ever in England with its carefully reported cases, was indeed so bad that the Enlightenment clamored for, and brought about, those codifications albeit only of the private and criminal law.

The real difference appears to lie in another field, not in fact entirely overlooked by the author. In Anglo-America we have the inductive (so to speak) method of "finding" (or making) the law from instance to instance, even as the classical Roman jurists developed their law through the casuistry of their writings. The civilians, on the other hand, rely on and are satisfied with general statements of the law and have only recently started to report and use precedents to any great extent.* In other words, both here and there the legal order provides, for instance, for a

* See this reviewer's *The Criteria of the Civil Law*, 7 *The Jurist* 140 (1947), and *Note*, 32 *Am. Bar Assn. J.* 180 (1946); Gordon Ireland, "Louisiana's Legal System Re-Appraised," 11 *Tulane L. Rev.* 585 (1930).

principal's liability for his agent; but the precise extent to which this rule may be drawn will in England and America be delineated by a vast amount of precedents, while in Europe this will be "left to the practice," meaning that any court, within the same jurisdiction, may have views on the question that differ from that of any other court as well as from its own opinions expressed on prior, analogous occasions. It is hard to see any organic superiority in the European form of law. The author does not fail to note the important fact that the two big families of law are asymptotically approaching one another.

REGINALD PARKER

Columbus University

Le Probleme du Chatiment des Crimes de Guerre. By J. Daniel. Cairo: R. Schindler; 1946. Pp. 282. Index. This compact study of the problem of war crimes has been written in Cairo and printed there. It gives, in Part I, a historical survey up to 1945, not including the Nuremburg trials. A war crime is defined as a punishable act constituting a violation of international law, committed during hostilities and injurious either to the community of nations or to an individual. Crimes injurious to the community are aggressive war or the effort to destroy a nation or large groups therein. Crimes against individuals are those relating to conduct of hostilities, treatment of prisoners of war, or in military occupation. Part II inquires as to who is the criminal, and the author is strongly opposed to holding a collectivity responsible. He insists that individuals are subjects of international law, that chiefs of states may be held responsible, and that other officials can not escape responsibility on the plea of superior orders. Tribunals, penalties and sanctions are discussed. In general, the author would build respect for the human person and at the same time affirm his responsibility as an individual.

CLYDE EAGLETON

Of the Board of Editors

The Chaco Dispute and the League of Nations. By Margaret La Foy. Ann Arbor: Edwards; 1946. Pp. viii, 158. Maps. Index. This is a Bryn Mawr doctor's dissertation of 1941, published lithoprinted in 1946. It deals with the Chaco-Dispute. After giving the background of this dispute, the study analyzes the first clash of 1928, and then the Chaco War up to the conclusion of the Peace Treaty of Buenos Aires. Based on a full use of the relevant Pan-American and League of Nations documents and on a considerable literature, the study is focused on the conflict of jurisdiction between different Pan-American bodies and between Pan-American and League of Nations procedures. In the course of this investigation the problems of Art. XV of the Covenant, of the arms embargo, of sanctions, of the definition of aggression, and of the doctrine of non-recognition are studied; the author correctly remarks that, notwithstanding this latter doctrine, Paraguay got by the Peace Treaty practically the whole Chaco, so that the Peace Treaty here, as usual, followed only the military result of the war. In the future it is to be hoped that the disastrous consequences of such a conflict of jurisdiction will be avoided, as the Inter-American System is now to be integrated into the UN as a regional system. But it is certainly further necessary that the Inter-American peace-machinery itself be adjusted, coördinated and entirely re-made, a task which is also before the Bogotá Conference.

JOSEF L. KUNZ

Year-Book of the United Nations, 1946-1947. By the United Nations Department of Public Information. Lake Success: United Nations; 1947. Pp. xxxiv, 992. Appendices. Charts. Index. \$10.00. In spite of its title this first UN Year-Book goes back to January 1, 1942, and brings the story down to July 1, 1947, even doubling back to pick up also the Atlantic Charter. Origins and development of the UN are described, internal structure and personnel, functions and procedure, historical events and actions, and all this with reference not only to UN in general (including General Assembly, all Councils, the Court, and Secretariat) but Specialized Agencies as well. There is an enormous amount of documentation, illustration, and tabulation.

Inevitably there is a good deal of prudence evident in the treatment of many crucial questions in such an official record, and a great deal of promotion, express and implied. It does appear that the attitude of the anonymous authors and authoresses of this monumental tome in less colorless and more positive, however, than is usually the case in governmental publications and more creative was the case in the publications issued by the League of Nations.

P. B. P.

Historia de Filosofía en Hispanoamérica. By Ramón Insúa Rodríguez. Guayaquil: Universidad de Guayaquil; 1945. Pp. 204. This is an Ecuadorian study on the history of philosophy in Latin-America from the Conquest to Alejandro Korn. Nearly half of the book is devoted to the Neo-Scholastic philosophy of colonial times. Since the independence French philosophical influence prevailed; the ideas of the French Revolution; later came the influence of Bentham, of the "Krausismo español," and, finally, positivism (Comte, Spencer, Darwin) dominated.

The study is important, as it gives information on a subject little known, but it cannot be called altogether satisfactory. It is especially to be regretted that the contemporary philosophy of Spanish America, a reaction against positivism, under the influence of Kant, Bergson, Husserl, Scheler, Dilthey, Heidegger and Ortega y Gasset is excluded.

The history of Latin American philosophy is also basic for the jurist, not only because the influence of Victoria and Suárez brought the "new science of international law" into the New World, but also because Latin-American philosophy of law is always, of course, in the strictest connection with Latin American general philosophy.

JOSEF L. KUNZ

Of the Board of Editors

The Calculated Risk. By Hamilton Fish Armstrong. New York: Macmillan; 1947. Pp. xii, 68. \$1.50. This small volume contains revisions of two articles previously published in *Foreign Affairs* and the *New York Times Magazine*. The first argues for the "Marshall Plan," which is distinguished from the "Truman Doctrine." The problem which faces the United States because of the economic deterioration of Western Europe and the efforts of the Soviet Union to spread Communism in such fertile soil can be solved, Mr. Armstrong thinks, but only if the United States subordinates considerations of how much it can afford to considerations of how much is necessary. The essay permits interesting observations on French, English, and German character, on the relationship of ideologies to economic conditions—of ways of life to ways of existence—and on the

problem of conducting public relations activities so that the voice of America will be neither shrill nor inaudible.

The second essay traces American-Soviet tensions to the influence of the Soviet Union's policy, especially in the use of the veto, in frustrating American expectations that the United Nations would usher in a more peaceful world. Mr. Armstrong proposes, as a means of strengthening the United Nations, a supplementary convention, analogous to the Geneva Protocol of 1924, by which the parties would assume the obligation to apply military sanctions when requested by two-thirds of their number (p. 58). This method of by-passing the Security Council seems to be justified by the terms of Article 51 of the Charter, and has a precedent in the Rio de Janeiro Agreement among the American states which rested on that article, as well as on the Charter articles concerning regional arrangements.

QUINCY WRIGHT

Of the Board of Editors

The Foreign Affairs Reader. Edited by Hamilton Fish Armstrong. New York and London: Harper; 1947. Pp. x, 492. \$5.00. This is a fascinating collection of articles that have appeared in *Foreign Affairs* during the era that began with the end of one world war and ended with the close of another. The ideas of this quarter century of history are expressed by authors who often were protagonists of some of its major actions; some of the articles themselves are known to have played an important role in shaping public opinion and hence to have contributed to the forming of national policies. There is, as could be expected, a great amount of special pleading in this anthology, but it is almost always as frank as it is intelligent and without exception brilliantly presented.

The teacher and student of international law will hear the motive of groping attempts to regulate the conduct of nations by legal rules throughout many of the articles. He will most profitably turn to such studies as the one by Lord Grey on the history of the neutrality concept, by Lord Lothian on the contribution which the British Empire made, by its very development, to the problem of international personality under the law of nations, by Newton D. Barker on the progress and limitations of international adjudication. The Pact of Paris is appraised cautiously by Mr. Barker and berated as impotent by the French journalist Pertinax, only to appear vindicated in the article by Secretary Stimson on the Nuremberg trial, "landmark in law."

The organization of nations for peace is critically reviewed in the article of a former high official of the League of Nations' Secretariat and by Mr. John Foster Dulles' carefully balanced description of the United Nations' birthpangs in San Francisco. A more searching probe into the problems of peace is provided by the French writer Julien Benda whose masterly analysis of the psychological and philosophical deceptiveness of appeasement and isolationism in France is of general importance.

When *Foreign Affairs* started to be published in the autumn of 1922 the Wilsonian confidence in the self-expansion of enlightened democracy had already been recognized as a dangerous error. In a contribution furnished by Professor Laski in his pre-marxian days the political conditions of modern mass democracy are set against a portrayal of the first powerful antagonists of bourgeois democracy: Lenin and Mussolini. The fascist

variety of the trend towards authoritarian rule is expounded by Mussolini's court philosopher Gentile and, most interestingly, in the natural history of nazism traced with penetrating insight by Miss Dorothy Thompson. In her article, written during the period of the Hitler-Stalin pact, Miss Thompson stresses the close affinity between the German and Russian phenomena that have emerged as military, messianic, and despotic from a society in which the middle classes had never been politically influential.

The articles contributed by three outstanding leaders of the bolshevik regime in its earlier days, Leon Trotsky, Karl Radek, and Nicolai Bukharin, are today easily the most interesting of the entire collection. Not only are they specimens of what the editor calls "the immeasurable self-dedication, infinite capacity for double-dealing, grandiose visions of the betterment of mankind, and total contempt for human life" (p. 170) which make up the Soviet version of totalitarianism. They present also an all but brilliant example of marxist analysis so often superior to the conclusions it reaches: Bukharin's criticism of geopolitics and Trotsky's cassandric warnings of the consequences of international economic liberalism are particularly remarkable. To read the recent and already classic article by "X" on the sources of Soviet conduct against the background of the exposition by the three Soviet authors is quite revealing. For an examination of these articles beyond their mere wordage discloses many of the "sources of soviet conduct" as summarized by "X."

In the polemics to which the article by "X" has been submitted, published as it was on the eve of the announcement of the Marshall Plan, it has generally been overlooked that this article did not at all strike a "conservative" keynote. It regards the peaceful containment of the Soviet Union as a possibility only if the United States will show enough practical and spiritual vitality to hold its own among the major ideological currents of our time. This need for a new democratic faith to fill the vacuum left by the decay of 19th century liberalism is another of the recurring themes in many of the articles of this Reader. However beautifully it is written, the noble essay by Benedetto Croce "Of Liberty" will hardly prove helpful. It goes but little beyond the conclusions of that more famous essay of similar title. The down-to-earth article on "Freedom and Control" by the editor of the London *Economist* contains at least some of the answers to our problems and should, for its analysis of the economic organization of Europe, be carefully studied by all who are seriously opposed to attaching any strings to the European Recovery Program.

Altogether this anniversary volume seems to be particularly appropriate to furnish both for the general reader and for the advanced undergraduate student of international relations indispensable background information and an almost inexhaustible source for reflection.

HENRY W. EHLMANN

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The Year Book of World Affairs 1947. Published by The London Institute of World Affairs. London: Stevens; 1947. Pp. viii, 344. Index. 20/-. This is a book made up of a miscellaneous collection of articles published by the London Institute of World Affairs. It is a venture necessitated by the inability of accommodating the essays in the quarterly journal known as *World Affairs* or *The Library of World Affairs* which the Institute publishes. Like many essays of this character, there is no connecting

link distinguishing the articles. It may, however, be said that all the essays are of a high order and it is difficult to select one as superior to the others. One American has contributed to the volume namely Professor Graham Stuart of Stanford,¹ an expert on problems of Tangier. Other valuable articles are the first article, on Soviet Foreign Policy, by Dr. W. Gurian, and one on Western and Soviet Democracy by Dr. R. Schlesinger. Other articles to be distinguished in the work are the one on Czechoslovakia by the well known journalist Bettany, by the Rev. C. S. Milford on the Communal Problem in India, by Professor Keeton on Nationalism in Eastern Asia, and a discriminating article on International Law and Society by Dr. Schwarzenberger. Other articles which merit mention are Professor Fisher's article on the Future of International Economic Institutions, Mr. Garnett's article on UNESCO, the Rev. Chirgwin's article on the World Church, and Dr. Ledermann's essay on the International Red Cross. Mr. Massey's article on the Peace-Time Application of Atomic Energy ought not to be overlooked. On the whole, the essays printed in this volume are likely to have greater permanency than is usual in books of this kind. The Reports on World Affairs, reviewing the principal books of the year, is also a useful contribution.

EDWIN BORCHARD

Of the Board of Editors

More Than Conquerors: Building Peace on Fair Trade. By Otto Tod Mallery. New York: Harper; 1947. Pp. xi, 204. Charts. Index. \$3.00. It was on December 6, 1945, that the United States Government started the long process looking towards the adoption of an international agreement which would provide rules for the freeing of world trade from national restrictions and the creation of an International Trade Organization to make effective those rules. On that date the United States published, in connection with the announcement of the British loan agreement, its Proposals for Expansion of World Trade and Employment.¹

These proposals have now been the subject of discussion, development, and negotiation through two preliminary conferences, one in London and the second at Geneva. They are now the subject of further debate and negotiation at the full dress conference in Havana. At the moment of writing there appears to be substantial likelihood that after months of debate a charter will be agreed upon for submission to the member nations for their ratification. If this proves to be the case the charter will then be the subject of new debate on the part of the peoples and legislatures of the various nations which must decide whether or not to ratify. Notably will this be the case in the United States in which tariff policy has been an important political issue for decades and whose foreign economic policy is of such vast consequence both to its own economy and to the world.

This book is a summary account of the reasons for and the general nature of the proposed International Trade Organization and Charter. In the preface the author states, "This book is intended not for experts but for good citizens." The book is short and the material is presented in simple language with the obvious design that the subject matter shall be easily comprehended by the average reader. The author clearly did not intend

¹ United States Department of State, Pub. 2411, *Commercial Policy Series* No. 79, 1945.

his work for the readers of this JOURNAL. It should not be judged by standards unrelated to its purpose.

One cannot but welcome any thoughtful contribution to the public understanding of a subject of such vital interest to our own country and to the world. For the purpose for which it was intended this book has many good qualities. It is difficult, however, not to wish that it were better. To this reviewer the great weakness in this book, as in fact in many similar attempts at popular education, is that it contented itself with giving a simple affirmative exposition of the reasons for the Charter without explaining the nature and reasons for the vital issues of policy upon which there is disagreement among the nations and which any charter which can be adopted must reconcile on the basis of compromise.

The Havana Conference was originally intended to last a comparatively short time. It has, in fact, gone on through many weeks of strenuous debate which has on more than one occasion threatened the failure of the conference. Its success is not yet assured. The reason for this is that the issues are of vital importance to all concerned. The conflicts may well prove to be the most important conflicts of our time. There will be no charter without substantial compromise on the part of all parties. An understanding of the nature of these conflicts, both for themselves and as a basis for understanding the compromises reached, would appear to be essential to an informed public opinion.

Some of the issues involved are as follows:

1. Reasonable men have strong differences of opinion as to how far and how soon world trade can be restored to the supply and demand economy of the market place. It is pretty generally agreed that the Charter cannot be fully effective until after the passage of sufficient time to permit a considerable measure of world recovery. The current draft of the Charter is replete with exceptions giving effect to this view.

2. There are many who believe that in any event a considerable degree of government management and planning is inevitable and desirable. Thus the current draft of the Charter contains a chapter expressly permitting Intergovernmental Commodity Agreements and the Chapter on Restrictive Business Practices is clearly a compromise. In addition the so-called undeveloped countries believe that they have a right to foster their rapid economic development and that, to this end, a very considerable degree of governmental interference with the free course of international trade should be permitted.

3. There is the problem of how a charter designed to free international trade as far as possible from state interference, so that the laws of supply and demand economics may govern, can be applicable to a socialist state whose foreign trade is wholly or partly a governmental monopoly.

4. There are important questions of organization as to which the grounds for difference are clear. On the one hand, there is the question whether the vote of the country with the greatest stake in world trade should count equally with that of the nation with the least, and if not, on what principle weighted voting could be established. On the other hand there is the problem of the relationship between the organization and its members with those nations who do not participate. Here a solution must be found which contains a sufficient penalty on non-membership and yet does not drive from the organization others whose relationship with the non-members is close.

The foregoing are just some of the basic issues now being discussed in Havana and which, if the organization is created, will continue to be major preoccupations. This book might have better served its purpose if the author had given at least a chapter to an exposition of the nature and reasons for these fundamental issues.

This book also raises the question as to why a subject so important to this nation and to the world as that of the post-war organization of trade between nations should have until now provoked so little fully qualified analysis. Such treatment is to be found in Edward S. Mason's "Controlling World Trade" (Cartels and Commodity Agreements), a study prepared for the Committee for Economic Development. The subject certainly deserves more such studies. Perhaps much work of this nature has been done but not published because the authors are awaiting the completion of the final agreement.

If an agreement is consummated, it will soon have to be presented to Congress for ratification. It seems inevitable that it will provoke no small measure of debate. It is to be hoped that that debate will be conducted on a high level and supported by a public opinion in this country which has the fullest possible understanding not only of the purposes of the Charter but of the issues at stake.

JOHN E. LOCKWOOD

Of the Board of Editors

China Handbook 1937-1945, New Edition with 1946 Supplement. Compiled by Chinese Ministry of Information. New York: Macmillan Co.; 1947. Pp. xvi, 844. Index. \$6.00. To experts in international relations in general and specialists in Far Eastern affairs in particular, this volume leaves something to be desired. Although the work purports to "contain a comprehensive and authoritative survey of the eight years of China's war, as well as an account of the major developments and the full text of important documents in the first post-war year of China," the chapter on "Foreign Affairs" imparts only fragmentary information on China's foreign relations during the crucial year following the conclusion of hostilities.

While the Charter of the United Nations and the Statute of the International Court of Justice are reproduced *verbatim et literatim*, references to China's participations in the various international conferences since the war are confined to listing the names of Chinese delegates. Certain important documents are conspicuous by their absence. China's proposals at the Dumbarton Oaks Conference, for example, which contributed substantially to the creation of the Economic and Social Council of the United Nations (in the original Chinese draft it was called "International Social Welfare Office"); the Trusteeship Council (originally known as "International Territorial Trusteeship Commission"; the Commission on Codification of International Law; and UNESCO (the original Chinese title was "International Cultural Relations Office"), should logically have a place in a compendium such as this. The treatment of Japan as a defeated enemy must be a matter of grave concern to the Chinese but, curiously, the Moscow Agreement of December 27, 1945, establishing the Far Eastern Commission for the formulation of post-surrender policies and the Allied Council for Japan for their execution, is not mentioned.

Regarding Sino-Soviet relations, it is stated in the 1946 Supplement that "In the Sino-Soviet Treaty of Friendship and Alliance signed in Moscow

on August 15, 1945, the Chinese Government agreed to grant independence to Outer Mongolia" (p. 757). As a matter of fact, however, the treaty itself contains no stipulation regarding the status of Outer Mongolia; it was in an exchange of notes between the Chinese and the Soviet Foreign Ministers that there was set forth China's intention to accord recognition to an independent Outer Mongolia on the condition that "after Japan's defeat, (if) a plebiscite of the people of Outer Mongolia confirms this desire." On the genesis of this epoch-making treaty no reference is made to the secret Yalta Agreement which was released by the United States Department of State on February 24, 1946, almost a year after its signature.

As the present edition did not appear until November, 1947, it might perhaps be expected that China's new Constitution and the recent decree redividing Manchuria into nine provinces could have been incorporated in the book.

The exact meaning of the statement that "even before the war no Chinese organization, official or otherwise, had ever attempted a year-book in English of this type and scope" (Preface) is rather obscure. The "Chinese Year Book," five issues of which were published prior to 1941 under the auspices of the "Council of International Affairs," Nanking and Chungking, seems to have constituted an attempt along precisely this line.

Finally, a few minor errors should have been corrected such as "reap-proachment" (p. 737) for "rapprochement" and "United Nations Food Conference" (p. 130) for "United Nations Conference on Food and Agriculture."

POELAU DAI

The American University

Why They Behave Like Russians. By John Fischer. New York: Harpers; 1947. Pp. 262. \$2.75. This slim volume is a compilation of several articles which the author had written for *Harper's*, *Life*, and *The New Yorker*. The publication of these articles was occasioned by the author's brief sojourn in the Ukraine in the Spring of 1946. Of the two months which the author spent there as a member of an UNRRA food mission, he was confined to bed ill for more than two weeks.

The main thesis of the book is set forth in the last two chapters, namely, Chapter XI—"What Are They Up To?" and Chapter XII—"Notes on Getting Along with the Russians."

John Fischer contends that Soviet Russia's *fear* is the motivating force of its aggressive expansionist policies. Like many other intelligent reporters, the author reiterates the theme that basically the present leaders of the Kremlin are "Scared Men" because they are haunted by the fear of an attack by the United States. "To begin with, we will have to recognize that nothing we can safely do at the moment will entirely dispel Soviet fears. We must expect the present tension to continue for a considerable period."

Fischer's probable solution for dealing with the leaders of Soviet Russia is the proverbial "hue and cry" of keeping the United States economically strong and militarily powerful and, by all means, to avoid a serious depression.

To the credit of the author it may be noted that he lays no claim to being a profound student of Soviet Russian affairs. In fact he twice quotes another journalist—Paul Winterton—to the effect that "there are no experts on Russia—only varying degrees of ignorance." Oddly enough, Mr.

Fischer states that he has been influenced by certain lines of thought developed by "such politically-diverse writers" as (the late) Nicholas Spykman, Walter Lippmann, Sir Bernard Pares, and Frederick Schuman, all four of whom have been, during the past decade, notoriously and consistently wrong in their appraisal of the dynamic social forces at play within the USSR and their impact on world affairs.

Although the author confined his six week sojourn exclusively to the Ukraine, he makes sweeping generalizations and far-fetched observations almost exclusively about the USSR and the Russians. As is known, few Russians live in the Ukraine even now. Yet this reviewer cannot quarrel with the author who has made a serious effort to write a fairly detached report about such a complex problem and still more complex country.

It is interesting to observe that, prior to the publication of this book, Mr. Fischer was involved in a controversy with his Chief of the UNRRA mission, Mr. Marshal McDuffie, who contended that the book was replete with brazen errors and inaccuracies. As a result of this furor many obvious factual mistakes have been corrected and the original title—*The Scared Men in the Kremlin* was replaced by the present title *Why They Behave Like Russians*.

By now it should be clear that Soviet Russia's foreign policy is neither an enigma nor a mystery nor a riddle, but a reflection of historic continuity strengthened by the dynamic force of Communism. The conspicuous absence of any reference to this factor is probably the outstanding failing of the book.

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ALLIED AND ASSOCIATED POWERS AND ITALY

1. TREATY OF PEACE*

*February 10, 1947 ***

THE UNION OF SOVIET SOCIALIST REPUBLICS, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE UNITED STATES OF AMERICA, CHINA, FRANCE, AUSTRALIA, BELGIUM, THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC, BRAZIL, CANADA, CZECHOSLOVAKIA, ETHIOPIA, GREECE, INDIA, THE NETHERLANDS, NEW ZEALAND, POLAND, THE UKRAINIAN SOVIET SOCIALIST REPUBLIC, THE UNION OF SOUTH AFRICA, AND THE PEOPLE'S FEDERAL REPUBLIC OF YUGOSLAVIA, HEREINAFTER REFERRED TO AS "THE ALLIED AND ASSOCIATED POWERS," OF THE ONE PART, AND ITALY, OF THE OTHER PART:

Whereas Italy under the Fascist regime became a party to the Tripartite Pact with Germany and Japan, undertook a war of aggression and thereby provoked a state of war with all the Allied and Associated Powers and with other United Nations, and bears her share of responsibility for the war; and

Whereas in consequence of the victories of the Allied forces, and with the assistance of the democratic elements of the Italian people, the Fascist regime in Italy was overthrown on July 25, 1943, and Italy, having surrendered unconditionally, signed terms of Armistice on September 3 and 29 of the same year; and

Whereas after the said Armistice Italian armed forces, both of the Government and of the Resistance Movement, took an active part in the war against Germany, and Italy declared war on Germany as from October 13, 1943, and thereby became a co-belligerent against Germany; and

Whereas the Allied and Associated Powers and Italy are desirous of concluding a treaty of peace which, in conformity with the principles of justice, will settle questions still outstanding as a result of the events herebefore recited and will form the basis of friendly relations between them, thereby enabling the Allied and Associated Powers to support Italy's application to become a member of the United Nations and also to adhere to any convention concluded under the auspices of the United Nations;

Have therefore agreed to declare the cessation of the state of war and for this purpose to conclude the present Treaty of Peace, and have accord-

* Text as issued by the Department of State.

** Date of signature; see Article 90 for date of effectiveness (below, p. 50); ratifications deposited September 15, 1947; this JOURNAL, Vol. 42 (1948), p. 191.

ingly appointed the undersigned Plenipotentiaries who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

PART I

TERRITORIAL CLAUSES

Section I—Frontiers

Article 1

The frontiers of Italy shall, subject to the modifications set out in Articles 2, 3, 4, 11 and 22, be those which existed on January 1, 1938. These frontiers are traced on the maps attached to the present Treaty (Annex I). In case of a discrepancy between the textual description of the frontiers and the maps, the text shall be deemed to be authentic.

Article 2

The frontier between Italy and France, as it existed on January 1, 1938, shall be modified as follows:

1. Little St. Bernard Pass

The frontier shall follow the watershed, leaving the present frontier at a point about 2 kilometers northwest of the Hospice, crossing the road about 1 kilometer northeast of the Hospice and rejoining the present frontier about 2 kilometers southeast of the Hospice.

2. Mont Cenis Plateau

The frontier shall leave the present frontier about 3 kilometers northwest of the summit of Rochemelon, cross the road about 4 kilometers southeast of the Hospice and rejoin the present frontier about 4 kilometers northeast of Mont d'Ambin.

3. Mont Thabor-Chaberton

(a) In the Mont Thabor area, the frontier shall leave the present frontier about 5 kilometers to the east of Mont Thabor and run southeastward to rejoin the present frontier about 3 kilometers west of the Pointe de Charra.

(b) In the Chaberton area, the frontier shall leave the present frontier about 3 kilometers north-northwest of Chaberton, which it skirts on the east, and shall cross the road about 1 kilometer from the present frontier, which it rejoins about 2 kilometers southeast of the village of Montgenevre.

4. Upper Valleys of the Tinée, Vesubie and Roya

The frontier shall leave the present frontier at Colla Longa, shall follow along the watershed by way of Mont Clapier, Col de Tenda, Mont Marguareis, whence it shall run southward by way of Mont Saccarello, Mont

Vacchi, Mont Pietravecchia, Mont Lega and shall reach a point approximately 100 meters from the present frontier near Colla Pegairolle, about 5 kilometers to the northeast of Breil; it then shall run in a southwesterly direction, and shall rejoin the existing frontier approximately 100 meters southwest of Mont Mergo.

5. The detailed description of those sections of the frontier to which the modifications set out in paragraphs 1, 2, 3 and 4 above apply, is contained in Annex II to the present Treaty and the maps to which this description refers form part of Annex I.

Article 3

The frontier between Italy and Yugoslavia shall be fixed as follows:

(i) The new frontier follows a line starting from the junction of the frontiers of Austria, Italy and Yugoslavia as they existed on January 1, 1938, and proceeding southward along the 1938 frontier between Yugoslavia and Italy to the junction of that frontier with the administrative boundary between the Italian provinces of Friuli (Udine) and Gorizia;

(ii) From this point the line coincides with the said administrative boundary up to a point approximately 0.5 kilometer north of the village of Mernico in the valley of the Iudrio;

(iii) Leaving the administrative boundary between the Italian provinces of Friuli and Gorizia at this point, the line extends eastward to a point approximately 0.5 kilometer west of the village of Vercoglia di Cosbana and thence southward between the valleys of the Quarnizzo and the Cosbana to a point approximately 1 kilometer southwest of the village of Fleana, bending so as to cut the river Recca at a point approximately 1.5 kilometers east of the Iudrio and leaving on the east the road from Cosbana via Nebola to Castel Dobra;

(iv) The line then continues to the southeast passing due south of the road between points 111 and 172, then south of the road from Vipulzano to Uclanzi passing points 57 and 122, then crossing the latter road about 100 meters east of point 122 and curving north in the direction of a point situated 350 meters southeast of point 266;

(v) Passing about 0.5 kilometer north of the village of San Floriano, the line extends eastward to Monte Sabotino (point 610), leaving to the north the village of Poggio San Valentino;

(vi) From Monte Sabotino the line extends southward, crosses the Isonzo (Soca) river at the town of Salcano, which it leaves in Yugoslavia, and runs immediately to the west of the railway line from Canale d'Isonzo to Montespino to a point about 750 meters south of the Gorizia-Aisovizza road;

(vii) Departing from the railway, the line then bends southwest leaving in Yugoslavia the town of San Pietro and in Italy the Hospice and the road bordering it and, some 700 meters from the station of Gorizia S. Marco,

crosses the railway connection between the above railway and the Sagrado-Cormons railway, skirts the Gorizia cemetery, which is left in Italy, passes between Highway No. 55 from Gorizia to Trieste, which highway is left in Italy, and the crossroads at point 54; leaving in Yugoslavia the towns of Vertoiba and Merna, and reaches a point located approximately at point 49;

(viii) Thence the line continues in a southerly direction across the Karst plateau, approximately 1 kilometer east of Highway No. 55, leaving on the east the village of Opacchiasella and on the west the village of Iamiano;

(ix) From a point approximately 1 kilometer east of Iamiano, the line follows the administrative boundary between the provinces of Gorizia and Trieste as far as a point approximately 2 kilometers northeast of the village of San Giovanni and approximately 0.5 kilometer northwest of point 208, forming the junction of the frontiers of Yugoslavia, Italy and the Free Territory of Trieste.

The map to which this description refers forms part of Annex I.

Article 4

The frontier between Italy and the Free Territory of Trieste shall be fixed as follows:

(i) The line starts from a point on the administrative boundary between the provinces of Gorizia and Trieste approximately 2 kilometers northeast of the village of San Giovanni and approximately 0.5 kilometer northwest of point 208, forming the junction of the frontiers of Yugoslavia, Italy and the Free Territory of Trieste, and runs southwestward to a point adjacent to Highway No. 14 and approximately 1 kilometer northwest of the junction between Highways Nos. 55 and 14, respectively running from Gorizia and Monfalcone to Trieste;

(ii) The line then extends in a southerly direction to a point, in the Gulf of Panzano, equidistant from Punta Sdobba at the mouth of the Isonzo (Soca) river and Castello Vecchio at Duino, about 3.3 kilometers south from the point where it departs from the coastline approximately 2 kilometers northwest of the town of Duino;

(iii) The line then reaches the high seas by following a line placed equidistant from the coastlines of Italy and the Free Territory of Trieste.

The map to which this description refers forms part of Annex I.

Article 5

1. The exact line of the new frontiers laid down in Articles 2, 3, 4 and 22 of the present Treaty shall be determined on the spot by Boundary Commissions composed of the representatives of the two Governments concerned.

2. The Commissions shall begin their work immediately on the coming into force of the present Treaty, and shall complete it as soon as possible and in any case within a period of six months.

3. Any questions which the Commissions are unable to agree upon will be referred to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, acting as provided in Article 86, for final settlement by such methods as they may determine, including, where necessary, the appointment of an impartial third Commissioner.

4. The expenses of the Boundary Commissions will be borne in equal parts by the two Governments concerned.

5. For the purpose of determining on the spot the exact frontier laid down in Articles 3, 4 and 22, the Commissioners shall be allowed to depart by 0.5 kilometer from the line laid down in the present Treaty in order to adjust the frontier to local geographical and economic conditions, provided that no village or town of more than 500 inhabitants, no important railroads or highways, and no major power or water supplies are placed under a sovereignty other than that resulting from the delimitations laid down in the present Treaty.

Section II—France (Special Clauses)

Article 6

Italy hereby cedes to France in full sovereignty the former Italian territory situated on the French side of the Franco-Italian frontier defined in Article 2.

Article 7

The Italian Government shall hand over to the French Government all archives, historical and administrative, prior to 1860, which concern the territory ceded to France under the Treaty of March 24, 1860, and the Convention of August 23, 1860.

Article 8

1. The Italian Government shall coöperate with the French Government for the possible establishment of a railway connection between Briançon and Modane, via Bardonnèche.

2. The Italian Government shall authorize, free of customs duty and inspection, passport and other such formalities, the passenger and freight railway traffic travelling on the connection thus established, through Italian territory, from one point to another in France, in both directions; and shall take all necessary measures to ensure that the French trains using the said connection are allowed, under the same conditions, to pass duty free and without unjustifiable delay.

3. The necessary arrangements shall be concluded in due course between the two Governments.

*Article 9**1. Plateau of Mont Cenis*

In order to secure to Italy the same facilities as Italy enjoyed in respect of hydro-electric power and water supply from the Lake of Mont Cenis before cession of this district to France, the latter shall give Italy under a bilateral agreement the technical guarantees set out in Annex III.

2. The Tenda-Briga District

In order that Italy shall not suffer any diminution in the supplies of electric power which Italy has drawn from sources existing in the Tenda-Briga district before its cession to France, the latter shall give Italy under a bilateral agreement the technical guarantees set out in Annex III.

Section III—Austria (Special Clauses)

Article 10

1. Italy shall enter into or confirm arrangements with Austria to guarantee free movement of passenger and freight traffic between the North and East Tyrol.

2. The Allied and Associated Powers have taken note of the provisions (the text of which is contained in Annex IV) agreed upon by the Austrian and Italian Governments on September 5, 1946.

Section IV—People's Federal Republic of Yugoslavia
(Special Clauses)*Article 11*

1. Italy hereby cedes to Yugoslavia in full sovereignty the territory situated between the new frontiers of Yugoslavia as defined in Articles 3 and 22 and the Italo-Yugoslav frontier as it existed on January 1, 1938, as well as the commune of Zara and all islands and adjacent islets lying within the following areas:

(a) The area bounded:

On the north by the parallel of 42° 50' N.;
On the south by the parallel of 42° 42' N.;
On the east by the meridian of 17° 10' E.;
On the west by the meridian of 16° 25' E.;

(b) The area bounded:

On the north by a line passing through the Porto del Quieto, equidistant from the coastline of the Free Territory of Trieste and Yugoslavia, and thence to the point 45° 15' N., 13° 24' E.;
On the south by the parallel 44° 23' N.;

On the west by a line connecting the following points:

- 1) 45° 15' N.—13° 24' E.;
- 2) 44° 51' N.—13° 37' E.;
- 3) 44° 23' N.—14° 18' 30" E.

On the east by the west coast of Istria, the islands and the mainland of Yugoslavia.

A chart of these areas is contained in Annex I.

2. Italy hereby cedes to Yugoslavia in full sovereignty the island of Pelagosa and the adjacent islets.

The island of Pelagosa shall remain demilitarised.

Italian fishermen shall enjoy the same rights in Pelagosa and the surrounding waters as were there enjoyed by Yugoslav fishermen prior to April 6, 1941.

Article 12

1. Italy shall restore to Yugoslavia all objects of artistic, historical, scientific, educational or religious character (including all deeds, manuscripts, documents and bibliographical material) as well as administrative archives (files, registers, plans and documents of any kind) which, as the result of the Italian occupation, were removed between November 4, 1918, and March 2, 1924, from the territories ceded to Yugoslavia under the treaties signed in Rapallo on November 12, 1920, and in Rome on January 27, 1924. Italy shall also restore all objects belonging to those territories and falling into the above categories, removed by the Italian Armistice Mission which operated in Vienna after the first World War.

2. Italy shall deliver to Yugoslavia all objects having juridically the character of public property and coming within the categories in paragraph 1 of the present Article, removed since November 4, 1918, from the territory which under the present Treaty is ceded to Yugoslavia, and those connected with the said territory which Italy received from Austria or Hungary under the Peace Treaties signed in St. Germain on September 10, 1919, and in the Trianon on June 4, 1920, and under the convention between Austria and Italy, signed in Vienna on May 4, 1920.

3. If, in particular cases, Italy is unable to restore or hand over to Yugoslavia the objects coming under paragraphs 1 and 2 of this Article, Italy shall hand over to Yugoslavia objects of the same kind as, and of approximately equivalent value to, the objects removed, in so far as such objects are obtainable in Italy.

Article 13

The water supply for Gorizia and its vicinity shall be regulated in accordance with the provisions of Annex V.

Section V—Greece (Special Clause)

Article 14

1. Italy hereby cedes to Greece in full sovereignty the Dodecanese Islands indicated hereafter, namely Stampalia (Astropalia), Rhodes (Rhodos), Calki (Kharki), Scarpanto, Casos (Casso), Piscopis (Tilos), Misiros (Nisyros), Calimnos (Kalymnos), Leros, Patmos, Lipsos (Lipso), Simi (Symi), Cos (Kos) and Castellorizo, as well as the adjacent islets.

2. These islands shall be and shall remain demilitarised.

3. The procedure and the technical conditions governing the transfer of these islands to Greece will be determined by agreement between the Governments of the United Kingdom and Greece and arrangements shall be made for the withdrawal of foreign troops not later than 90 days from the coming into force of the present Treaty.

PART II

POLITICAL CLAUSES

Section I—General Clauses

Article 15

Italy shall take all measures necessary to secure to all persons under Italian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

Article 16

Italy shall not prosecute or molest Italian nationals, including members of the armed forces, solely on the ground that during the period from June 10, 1940, to the coming into force of the present Treaty, they expressed sympathy with or took action in support of the cause of the Allied and Associated Powers.

Article 17

Italy, which, in accordance with Article 30 of the Armistice Agreement, has taken measures to dissolve the Fascist organizations in Italy, shall not permit the resurgence on Italian territory of such organizations, whether political, military or semi-military, whose purpose it is to deprive the people of their democratic rights.

Article 18

Italy undertakes to recognize the full force of the Treaties of Peace with Roumania, Bulgaria, Hungary and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associ-

ated Powers in respect of Austria, Germany and Japan for the restoration of peace.

Section II—Nationality. Civil and Political Rights

Article 19

1. Italian citizens who were domiciled on June 10, 1940, in territory transferred by Italy to another State under the present Treaty, and their children born after that date, shall, except as provided in the following paragraph, become citizens with full civil and political rights of the State to which the territory is transferred, in accordance with legislation to that effect to be introduced by that State within three months from the coming into force of the present Treaty. Upon becoming citizens of the State concerned they shall lose their Italian citizenship.

2. The Government of the State to which the territory is transferred shall, by appropriate legislation within three months from the coming into force of the present Treaty, provide that all persons referred to in paragraph 1 over the age of eighteen years (or married persons whether under or over that age) whose customary language is Italian, shall be entitled to opt for Italian citizenship within a period of one year from the coming into force of the present Treaty. Any person so opting shall retain Italian citizenship and shall not be considered to have acquired the citizenship of the State to which the territory is transferred. The option of the husband shall not constitute an option on the part of the wife. Option on the part of the father, or, if the father is not alive, on the part of the mother, shall, however, automatically include all unmarried children under the age of eighteen years.

3. The State to which the territory is transferred may require those who take advantage of the option to move to Italy within a year from the date when the option was exercised.

4. The State to which the territory is transferred shall, in accordance with its fundamental laws, secure to all persons within the territory, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

Article 20

1. Within a period of one year from the coming into force of the present Treaty, Italian citizens over 18 years of age (or married persons whether under or over that age), whose customary language is one of the Yugoslav languages (Serb, Croat or Slovene), and who are domiciled on Italian territory may, upon filing a request with a Yugoslav diplomatic or consular

representative in Italy, acquire Yugoslav nationality if the Yugoslav authorities accept their request.

2. In such cases, the Yugoslav Government will communicate to the Italian Government through the diplomatic channel lists of the persons who have thus acquired Yugoslav nationality. The persons mentioned in such lists will lose their Italian nationality on the date of such official communication.

3. The Italian Government may require such persons to transfer their residence to Yugoslavia within a period of one year from the date of such official communication.

4. For the purposes of this Article, the rules relating to the effect of options on wives and on children, set forth in Article 19, paragraph 2, shall apply.

5. The provisions of Annex XIV, paragraph 10 of the present Treaty, applying to the transfer of properties belonging to persons who opt for Italian nationality, shall equally apply to the transfer of properties belonging to persons who opt for Yugoslav nationality under this Article.

Section III—Free Territory of Trieste

Article 21

1. There is hereby constituted the Free Territory of Trieste, consisting of the area lying between the Adriatic Sea and the boundaries defined in Articles 4 and 22 of the present Treaty. The Free Territory of Trieste is recognized by the Allied and Associated Powers and by Italy, which agree that its integrity and independence shall be assured by the Security Council of the United Nations.

2. Italian sovereignty over the area constituting the Free Territory of Trieste, as above defined, shall be terminated upon the coming into force of the present Treaty.

3. On the termination of Italian sovereignty, the Free Territory of Trieste shall be governed in accordance with an instrument for provisional regime drafted by the Council of Foreign Ministers and approved by the Security Council. This Instrument shall remain in force until such date as the Security Council shall fix for the coming into force of the Permanent Statute which shall have been approved by it. The Free Territory shall thenceforth be governed by the provisions of such Permanent Statute. The texts of the Permanent Statute and of the Instrument for the Provisional Regime are contained in Annexes VI and VII.

4. The Free Territory of Trieste shall not be considered as ceded territory within the meaning of Article 19 and Annex XIV of the present Treaty.

5. Italy and Yugoslavia undertake to give to the Free Territory of Trieste the guarantees set out in Annex IX.

Article 22

The frontier between Yugoslavia and the Free Territory of Trieste shall be fixed as follows:

(i) The line starts from a point on the administrative boundary between the provinces of Gorizia and Trieste, approximately 2 kilometers northeast of the village of San Giovanni and approximately 0.5 kilometer northwest of point 208, forming the junction of the frontiers of Yugoslavia, Italy and the Free Territory of Trieste, and follows this administrative boundary as far as Monte Lanaro (point 546); thence it extends southeastward as far as Monte Cocusso (point 672) through point 461, Meducia (point 475), Monte dei Pini (point 476) and point 407, crossing Highway No. 58, from Trieste to Sesana, about 3.3 kilometers to the southwest of this town, and leaving the villages of Vogliano and Orle to the east, and at approximately 0.4 kilometer to the west, the village of Zolla.

(ii) From Monte Cocusso, the line, continuing southeastward leaving the village of Grozzana to the west, reaches Monte Goli (point 621), then turning southwestward, crosses the road from Trieste to Cosina at point 455 and the railway at point 485, passes by points 416 and 326, leaving the villages of Beca and Castel in Yugoslav territory, crosses the road from Ospio to Gabrovizza d'Istria about 100 meters to the southeast of Ospio; then crosses the river Risana and the road from Villa Decani to Risano at a point about 350 meters west of the latter village, the village of Rosario and the road from Risano to San Sergio being left in Yugoslav territory; from this point the line proceeds as far as the cross roads situated about 1 kilometer northeastward of point 362, passing by points 285 and 354.

(iii) Thence, the line runs as far as a point about 0.5 kilometer east of the village of Cernova, crossing the river Dragogna about 1 kilometer north of this village, leaving the villages of Bucciai and Truscolo to the west and the village of Tersecco to the east, it then runs southwestward to the southeast of the road connecting the villages of Cernova and Chervoi, leaving this road 0.8 kilometer to the east of the village of Cucciani; it then runs in a general south-southwesterly direction, passing about 0.4 kilometer east of Monte Braico and at about 0.4 kilometer west of the village of Sterna Filaria, leaving the road running from this village to Piemonte to the east, passing about 0.4 kilometer west of the town of Piemonte and about 0.5 kilometer east of the town of Castagna and reaching the river Quieto at a point approximately 1.6 kilometers southwest of the town of Castagna.

(iv) Thence the line follows the main improved channel of the Quieto to its mouth, passing through Porto del Quieto to the high seas by following a line placed equidistant from the coastlines of the Free Territory of Trieste and Yugoslavia.

The map to which this description refers forms part of Annex I.

Section IV—Italian Colonies

Article 23

1. Italy renounces all right and title to the Italian territorial possessions in Africa, *i.e.*, Libya, Eritrea and Italian Somaliland.

2. Pending their final disposal, the said possessions shall continue under their present administration.

3. The final disposal of these possessions shall be determined jointly by the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France within one year from the coming into force of the present Treaty, in the manner laid down in the joint declaration of February 10, 1947, issued by the said Governments, which is reproduced in Annex XI.

Section V—Special Interests of China

Article 24

Italy renounces in favour of China all benefits and privileges resulting from the provisions of the final Protocol signed at Peking on September 7, 1901, and all annexes, notes and documents supplementary thereto, and agrees to the abrogation in respect of Italy of the said protocol, annexes, notes and documents. Italy likewise renounces any claim thereunder to an indemnity.

Article 25

Italy agrees to the cancellation of the lease from the Chinese Government under which the Italian Concession at Tientsin was granted, and to the transfer to the Chinese Government of any property and archives belonging to the municipality of the said Concession.

Article 26

Italy renounces in favour of China the rights accorded to Italy in relation to the International Settlements at Shanghai and Amoy, and agrees to the reversion of the said Settlements to the administration and control of the Chinese Government.

Section VI—Albania

Article 27

Italy recognises and undertakes to respect the sovereignty and independence of the State of Albania.

Article 28

Italy recognises that the Island of Saseno is part of the territory of Albania and renounces all claims thereto.

Article 29

Italy formally renounces in favour of Albania all property (apart from normal diplomatic or consular premises), rights, concessions, interests and advantages of all kinds in Albania, belonging to the Italian State or Italian para-statal institutions. Italy likewise renounces all claims to special interests or influence in Albania, acquired as a result of the aggression of April 7, 1939, or under treaties or agreements concluded before that date.

The economic clauses of the present Treaty, applicable to the Allied and Associated Powers, shall apply to other Italian property and other economic relations between Albania and Italy.

Article 30

Italian nationals in Albania will enjoy the same juridical status as other foreign nationals, but Italy recognises the legality of all Albanian measures annulling or modifying concessions or special rights granted to Italian nationals provided that such measures are taken within a year from the coming into force of the present Treaty.

Article 31

Italy recognises that all agreements and arrangements made between Italy and the authorities installed in Albania by Italy from April 7, 1939, to September 3, 1943, are null and void.

Article 32

Italy recognises the legality of any measures which Albania may consider necessary to take in order to confirm or give effect to the preceding provisions.

Section VII—Ethiopia

Article 33

Italy recognises and undertakes to respect the sovereignty and independence of the State of Ethiopia.

Article 34

Italy formally renounces in favour of Ethiopia all property (apart from normal diplomatic or consular premises), rights, interests and advantages of all kinds acquired at any time in Ethiopia by the Italian State, as well as all para-statal property as defined in paragraph 1 of Annex XIV of the present Treaty.

Italy also renounces all claims to special interests or influence in Ethiopia.

Article 35

Italy recognises the legality of all measures which the Government of Ethiopia has taken or may hereafter take in order to annul Italian measures respecting Ethiopia taken after October 3, 1935, and the effects of such measures.

Article 36

Italian nationals in Ethiopia will enjoy the same juridical status as other foreign nationals, but Italy recognises the legality of all measures of the Ethiopian Government annulling or modifying concessions or special rights granted to Italian nationals, provided such measures are taken within a year from the coming into force of the present Treaty.

Article 37

Within eighteen months from the coming into force of the present Treaty, Italy shall restore all works of art, religious objects, archives and objects of historical value belonging to Ethiopia or its nationals and removed from Ethiopia to Italy since October 3, 1935.

Article 38

The date from which the provisions of the present Treaty shall become applicable as regards all measures and acts of any kind whatsoever entailing the responsibility of Italy or of Italian nationals towards Ethiopia, shall be held to be October 3, 1935.

Section VIII—International Agreements*Article 39*

Italy undertakes to accept any arrangements which have been or may be agreed for the liquidation of the League of Nations, the Permanent Court of International Justice and also the International Financial Commission in Greece.

Article 40

Italy hereby renounces all rights, titles and claims deriving from the mandate system or from any undertakings given in connection therewith, and all special rights of the Italian State in respect of any mandated territory.

Article 41

Italy recognises the provisions of the Final Act of August 31, 1945, and of the Franco-British Agreement of the same date on the Statute of Tangier, as well as all provisions which may be adopted by the Signatory Powers for carrying out these instruments.

Article 42

Italy shall accept and recognise any arrangements which may be made by the Allied and Associated Powers concerned for the modification of the Congo Basin Treaties with a view to bringing them into accord with the Charter of the United Nations.

Article 43

Italy hereby renounces any rights and interests she may possess by virtue of Article 16 of the Treaty of Lausanne signed on July 24, 1923.

Section IX—Bilateral Treaties

Article 44

1. Each Allied or Associated Power will notify Italy, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Italy it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.

2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

3. All such treaties not so notified shall be regarded as abrogated.

PART III

WAR CRIMINALS

Article 45

1. Italy shall take all necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity;

(b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.

2. At the request of the United Nations Government concerned, Italy shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, who will reach agreement with regard to the difficulty.

PART IV

NAVAL, MILITARY AND AIR CLAUSES

Section I—Duration of Application

Article 46

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Italy or, after Italy becomes a member of the United Nations, by agreement between the Security Council and Italy.

Section II—General Limitations

Article 47

1. (a) The system of permanent Italian fortifications and military installations along the Franco-Italian frontier, and their armaments, shall be destroyed or removed.

(b) This system is deemed to comprise only artillery and infantry fortifications whether in groups or separated, pillboxes of any type, protected accommodation for personnel, stores and ammunition, observation posts and military cableways, whatever may be their importance and actual condition of maintenance or state of construction, which are constructed of metal, masonry or concrete or excavated in the rock.

2. The destruction or removal, mentioned in paragraph 1 above, is limited to a distance of 20 kilometers from any point on the frontier as defined by the present Treaty, and shall be completed within one year from the coming into force of the Treaty.

3. Any reconstruction of the above-mentioned fortifications and installations is prohibited.

4. (a) The following construction to the east of the Franco-Italian frontier is prohibited: permanent fortifications where weapons capable of firing into French territory or territorial waters can be emplaced; permanent military installations capable of being used to conduct or direct fire into French territory or territorial waters; and permanent supply and storage facilities emplaced solely for the use of the above-mentioned fortifications and installations.

(b) This prohibition does not include other types of non-permanent fortifications or surface accommodations and installations which are designed to meet only requirements of an internal character and of local defence of the frontiers.

5. In a coastal area 15 kilometers deep, stretching from the Franco-Italian frontier to the meridian of 9° 30' E., Italy shall not establish any new, nor expand any existing, naval bases or permanent naval installations.

This does not prohibit minor alterations to, nor the maintenance in good repair of, existing naval installations provided that their overall capacity will not thereby be increased.

Article 48

1. (a) Any permanent Italian fortifications and military installations along the Italo-Yugoslav frontier, and their armaments, shall be destroyed or removed.

(b) These fortifications and installations are deemed to comprise only artillery and infantry fortifications whether in groups or separated, pill-boxes of any type, protected accommodation for personnel, stores and ammunition, observation posts and military cableways, whatever may be their importance and actual condition of maintenance or state of construction, which are constructed of metal, masonry or concrete or excavated in the rock.

2. The destruction or removal, mentioned in paragraph 1 above, is limited to a distance of 20 kilometers from any point on the frontier, as defined by the present Treaty, and shall be completed within one year from the coming into force of the Treaty.

3. Any reconstruction of the above-mentioned fortifications and installations is prohibited.

4. (a) The following construction to the west of the Italo-Yugoslav frontier is prohibited: permanent fortifications where weapons capable of firing into Yugoslav territory or territorial waters can be emplaced; permanent military installations capable of being used to conduct or direct fire into Yugoslav territory or territorial waters; and permanent supply and storage facilities emplaced solely for the use of the above-mentioned fortifications and installations.

(b) This prohibition does not include other types of non-permanent fortifications or surface accommodations and installations which are designed to meet only requirements of an internal character and of local defence of the frontiers.

5. In a coastal area 15 kilometers deep, stretching from the frontier between Italy and Yugoslavia and between Italy and the Free Territory of Trieste to the latitude of 44° 50' N. and in the islands adjacent to this coast, Italy shall not establish any new, nor expand any existing, naval bases or permanent naval installations. This does not prohibit minor alterations to, nor the maintenance in good repair of, existing naval installations and bases provided that their overall capacity will not thereby be increased.

6. In the Apulian Peninsula east of longitude 17° 45' E., Italy shall not construct any new permanent military, naval or military air installations nor expand existing installations. This does not prohibit minor alterations to, nor the maintenance in good repair of, existing installations provided that their overall capacity will not thereby be increased. Accommodation

for such security forces as may be required for tasks of an internal character and local defence of frontiers will, however, be permitted.

Article 49

1. Pantellaria, the Pelagian Islands (Lampedusa, Lampione and Linosa) and Pianosa (in the Adriatic) shall be and shall remain demilitarised.

2. Such demilitarisation shall be completed within one year from the coming into force of the present Treaty.

Article 50

1. In Sardinia all permanent coast defence artillery emplacements and their armaments and all naval installations which are located within a distance of 30 kilometers from French territorial waters shall be removed to the mainland of Italy or demolished within one year from the coming into force of the present Treaty.

2. In Sicily and Sardinia all permanent installations and equipment for the maintenance and storage of torpedoes, sea mines and bombs shall be demolished or removed to the mainland of Italy within one year from the coming into force of the present Treaty.

3. No improvements to, reconstruction of, or extensions of existing installations or permanent fortifications in Sicily and Sardinia shall be permitted; however, with the exception of the northern Sardinia areas described in paragraph 1 above, normal maintenance of such installations or permanent fortifications and weapons already installed in them may take place.

4. In Sicily and Sardinia Italy shall be prohibited from constructing any naval, military and air force installations or fortifications except for such accommodation for security forces as may be required for tasks of an internal character.

Article 51

Italy shall not possess, construct or experiment with (i) any atomic weapon, (ii) any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), (iii) any guns with a range of over 30 kilometers, (iv) sea mines or torpedoes of non-contact types actuated by influence mechanisms, (v) any torpedoes capable of being manned.

Article 52

The acquisition of war material of German or Japanese origin or design, either from inside or outside Italy, or its manufacture, is prohibited to Italy.

Article 53

Italy shall not manufacture or possess, either publicly or privately, any war material different in type from, or exceeding in quantity, that required for the forces permitted in Sections III, IV and V below.

Article 54

The total number of heavy and medium tanks in the Italian armed forces shall not exceed 200.

Article 55

In no case shall any officer or non-commissioned officer of the former Fascist Militia or of the former Fascist Republican Army be permitted to hold officer's or non-commissioned officer's rank in the Italian Navy, Army, Air Force or Carabinieri, with the exception of such persons as shall have been exonerated by the appropriate body in accordance with Italian law.

Section III—Limitations of the Italian Navy

Article 56

1. The present Italian Fleet shall be reduced to the units listed in Annex XII A.
2. Additional units not listed in Annex XII and employed only for the specific purpose of minesweeping, may continue to be employed until the end of the mine clearance period as shall be determined by the International Central Board for Mine Clearance of European Waters.
3. Within two months from the end of the said period, such as these vessels as are on loan to the Italian Navy from other Powers shall be returned to those Powers, and all other additional units shall be disarmed and converted to civilian use.

Article 57

1. Italy shall effect the following disposal of the units of the Italian Navy specified in Annex XII B:
 - (a) The said units shall be placed at the disposal of the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France;
 - (b) Naval vessels required to be transferred in compliance with subparagraph (a) above shall be fully equipped, in operational condition including a full outfit of armament stores, and complete with on-board spare parts and all necessary technical data;
 - (c) The transfer of the naval vessels mentioned above shall be effected within three months from the coming into force of the present Treaty, except that, in the case of naval vessels that can not be refitted within

three months, the time limit for the transfer may be extended by the Four Governments;

(d) Reserve allowance of spare parts and armament stores for the naval vessels mentioned above shall, as far as possible, be supplied with the vessels.

The balance of reserve spare parts and armament stores shall be supplied to an extent and at dates to be decided by the Four Governments, in any case within a maximum of one year from the coming into force of the present Treaty.

2. Details relating to the above transfers will be arranged by a Four Power Commission to be established under a separate protocol.

3. In the event of loss or damage, from whatever cause, to any of the vessels in the Annex XII B scheduled for transfer, and which can not be made good by the agreed date for transfer of the vessel or vessels concerned, Italy undertakes to replace such vessel or vessels by equivalent tonnage from the list in Annex XII A, the actual vessel or vessels to be substituted being selected by the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France.

Article 58

1. Italy shall effect the following disposal of submarines and nonoperational naval vessels. The time limits specified below shall be taken as commencing with the coming into force of the present Treaty.

(a) Surface naval vessels afloat not listed in Annex XII, including naval vessels under construction afloat, shall be destroyed or scrapped for metal within nine months.

(b) Naval vessels under construction on slips shall be destroyed or scrapped for metal within nine months.

(c) Submarines afloat and not listed in Annex XII B shall be sunk in the open sea in a depth of over 100 fathoms within three months.

(d) Naval vessels sunk in Italian harbours and approach channels, in obstruction of normal shipping, shall, within two years, either be destroyed on the spot or salvaged and subsequently destroyed or scrapped for metal.

(e) Naval vessels sunk in shallow Italian waters not in obstruction of normal shipping shall within one year be rendered incapable of salvage.

(f) Naval vessels capable of reconversion which do not come within the definition of war material, and which are not listed in Annex XII, may be reconverted to civilian uses or are to be demolished within two years.

2. Italy undertakes, prior to the sinking or destruction of naval vessels and submarines as provided for in the preceding paragraph, to salvage such equipment and spare parts as may be useful in completing the on-board and reserve allowances of spare parts and equipment to be supplied, in accordance with Article 57, paragraph 1, for all ships specified in Annex XII B.

3. Under the supervision of the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, Italy may also salvage such equipment and spare parts of a non-warlike character as are readily adaptable for use in Italian civil economy.

Article 59

1. No battleship shall be constructed, acquired or replaced by Italy.
2. No aircraft carrier, submarine or other submersible craft, motor torpedo boat or specialised types of assault craft shall be constructed, acquired, employed or experimented with by Italy.
3. The total standard displacement of the war vessels, other than battleships, of the Italian Navy, including vessels under construction after the date of launching, shall not exceed 67,500 tons.
4. Any replacement of war vessels by Italy shall be effected within the limit of tonnage given in paragraph 3. There shall be no restriction on the replacement of auxiliary vessels.
5. Italy undertakes not to acquire or lay down any war vessels before January 1, 1950, except as necessary to replace any vessel, other than a battleship, accidentally lost, in which case the displacement of the new vessel is not to exceed by more than ten per cent the displacement of the vessel lost.
6. The terms used in this Article are, for the purposes of the present Treaty, defined in Annex XIII A.

Article 60

1. The total personnel of the Italian Navy, excluding any naval air personnel, shall not exceed 25,000 officers and men.
2. During the mine clearance period as determined by the International Central Board for Mine Clearance of European Waters, Italy shall be authorized to employ for this purpose an additional number of officers and men not to exceed 2,500.
3. Permanent naval personnel in excess of that permitted under paragraph 1 shall be progressively reduced as follows, time limits being taken as commencing with the coming into force of the present Treaty:
 - (a) To 30,000 within six months;
 - (b) To 25,000 within nine months.

Two months after the completion of minesweeping by the Italian Navy, the excess personnel authorized by paragraph 2 is to be disbanded or absorbed within the above numbers.

4. Personnel, other than those authorized under paragraphs 1 and 2, and other than any naval air personnel authorized under Article 65, shall not receive any form of naval training as defined in Annex XIII B.

Section IV—Limitation of the Italian Army

Article 61

The Italian Army, including the Frontier Guards, shall be limited to a force of 185,000 combat, service and overhead personnel and 65,000 Carabinieri, though either of the above elements may be varied by 10,000 as long as the total ceiling does not exceed 250,000. The organisation and armament of the Italian ground forces, as well as their deployment throughout Italy, shall be designed to meet only tasks of an internal character, local defence of Italian frontiers and anti-aircraft defence.

Article 62

The Italian Army, in excess of that permitted under Article 61 above, shall be disbanded within six months from the coming into force of the present Treaty.

Article 63

Personnel other than those forming part of the Italian Army or Carabinieri shall not receive any form of military training as defined in Annex XIII B.

Section V—Limitation of the Italian Air Force

Article 64

1. The Italian Air Force, including any naval air arm, shall be limited to a force of 200 fighter and reconnaissance aircraft and 150 transport, air-sea rescue, training (school type) and liaison aircraft. These totals include reserve aircraft. All aircraft except for fighter and reconnaissance aircraft shall be unarmed. The organisation and armament of the Italian Air Force as well as their deployment throughout Italy shall be designed to meet only tasks of an internal character, local defence of Italian frontiers and defence against air attack.

2. Italy shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

Article 65

1. The personnel of the Italian Air Force, including any naval air personnel, shall be limited to a total of 25,000 effectives, which shall include combat, service and overhead personnel.

2. Personnel other than those forming part of the Italian Air Force shall not receive any form of military air training as defined in Annex XIII B.

Article 66

The Italian Air Force, in excess of that permitted under Article 65 above, shall be disbanded within six months from the coming into force of the present Treaty.

Section VI—Disposal of War Material
(as defined in ANNEX XIII c)

Article 67

1. All Italian war material in excess of that permitted for the armed forces specified in Sections III, IV and V shall be placed at the disposal of the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France, according to such instructions as they may give to Italy.

2. All Allied war material in excess of that permitted for the armed forces specified in Sections III, IV and V shall be placed at the disposal of the Allied or Associated Power concerned according to the instructions to be given to Italy by the Allied or Associated Power concerned.

3. All German and Japanese war material in excess of that permitted for the armed forces specified in Sections III, IV and V, and all German or Japanese drawings, including existing blueprints, prototypes, experimental models and plans, shall be placed at the disposal of the Four Governments in accordance with such instructions as they may give to Italy.

4. Italy shall renounce all rights to the above-mentioned war material and shall comply with the provisions of this Article within one year from the coming into force of the present Treaty except as provided for in Articles 56 to 58 thereof.

5. Italy shall furnish to the Four Governments list of all excess war material within six months from the coming into force of the present Treaty.

Section VII—Prevention of German and Japanese Rearmament

Article 68

Italy undertakes to coöperate fully with the Allied and Associated Powers with a view to ensuring that Germany and Japan are unable to take steps outside German and Japanese territories towards rearmament.

Article 69

Italy undertakes not to permit the employment or training in Italy of any technicians, including military or civil aviation personnel, who are or have been nationals of Germany or Japan.

Article 70

Italy undertakes not to acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

Section VIII—Prisoners of War

Article 71

1. Italian prisoners of war shall be repatriated as soon as possible in accordance with arrangements agreed upon by the individual Powers detaining them and Italy.

2. All costs, including maintenance costs, incurred in moving Italian prisoners of war from their respective assembly points, as chosen by the Government of the Allied or Associated Power concerned, to the point of their entry into Italian territory, shall be borne by the Italian Government.

Section IX—Mine Clearance

Article 72

As from the coming into force of the present Treaty, Italy will be invited to join the Mediterranean Zone Board of the International Organisation for Mine Clearance of European Waters, and shall maintain at the disposal of the Central Mine Clearance Board all Italian minesweeping forces until the end of the post-war mine clearance period as determined by the Central Board.

PART V

WITHDRAWAL OF ALLIED FORCES

Article 73

1. All armed forces of the Allied and Associated Powers shall be withdrawn from Italy as soon as possible and in any case not later than 90 days from the coming into force of the present Treaty.

2. All Italian goods for which compensation has not been made and which are in possession of the armed forces of the Allied and Associated Powers in Italy at the coming into force of the present Treaty shall be returned to the Italian Government within the same period of 90 days or due compensation shall be made.

3. All bank and cash balances in the hands of the forces of the Allied and Associated Powers at the coming into force of the present Treaty which have been supplied free of cost by the Italian Government shall similarly be returned or a corresponding credit given to the Italian Government.

PART VI

CLAIMS ARISING OUT OF THE WAR

Section I—Reparation

*Article 74**A. Reparation for the Union of Soviet Socialist Republics*

1. Italy shall pay the Soviet Union reparation in the amount of \$100,000,000 during a period of seven years from the coming into force of

the present Treaty. Deliveries from current industrial production shall not be made during the first two years.

2. Reparation shall be made from the following sources:

(a) A share of the Italian factory and tool equipment designed for the manufacture of war material, which is not required by the permitted military establishments, which is not readily susceptible of conversion to civilian purposes and which will be removed from Italy pursuant to Article 67 of the present Treaty;

(b) Italian assets in Roumania, Bulgaria and Hungary, subject to the exceptions specified in paragraph 6 of Article 79;

(c) Italian current industrial production, including production by extractive industries.

3. The quantities and types of goods to be delivered shall be the subject of agreements between the Governments of the Soviet Union and of Italy, and shall be selected and deliveries shall be scheduled in such a way as to avoid interference with the economic reconstruction of Italy and the imposition of additional liabilities on other Allied or Associated Powers. Agreements concluded under this paragraph shall be communicated to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France.

4. The Soviet Union shall furnish to Italy on commercial terms the materials which are normally imported into Italy and which are needed for the production of these goods. Payments for these materials shall be made by deducting the value of the materials furnished from the value of the goods delivered to the Soviet Union.

5. The Four Ambassadors shall determine the value of the Italian assets to be transferred to the Soviet Union.

6. The basis of calculation for the settlement provided in this Article will be the United States dollar at its gold parity on July 1, 1946, i.e. \$35 for one ounce of gold.

B. Reparation for Albania, Ethiopia, Greece and Yugoslavia

1. Italy shall pay reparation to the following States:

Albania in the amount of	\$ 5,000,000
Ethiopia in the amount of	\$ 25,000,000
Greece in the amount of	\$105,000,000
Yugoslavia in the amount of	\$125,000,000

These payments shall be made during a period of seven years from the coming into force of the present Treaty. Deliveries from current industrial production shall not be made during the first two years.

2. Reparation shall be made from the following sources:

(a) A share of the Italian factory and tool equipment designed for the manufacture of war material, which is not required by the permitted military establishments, which is not readily susceptible of conversion to civilian purposes and which will be removed from Italy pursuant to Article 67 of the present Treaty;

(b) Italian current industrial production, including production by extractive industries;

(c) All other categories of capital goods or services, excluding Italian assets which, under Article 79 of the present Treaty, are subject to the jurisdiction of the States mentioned in paragraph 1 above. Deliveries under this paragraph shall include either or both of the passenger vessels *Saturnia* and *Vulcania*, if, after their value has been determined by the Four Ambassadors, they are claimed within 90 days by one of the States mentioned in paragraph 1 above. Such deliveries may also include seeds.

3. The quantities and types of goods and services to be delivered shall be the subject of agreements between the Governments entitled to receive reparation and the Italian Government, and shall be selected and deliveries shall be scheduled in such a way as to avoid interference with the economic reconstruction of Italy and the imposition of additional liabilities on other Allied or Associated Powers.

4. The States entitled to receive reparation from current industrial production shall furnish to Italy on commercial terms the materials which are normally imported into Italy and which are needed for the production of these goods. Payment for these materials shall be made by deducting the value of the materials furnished from the value of the goods delivered.

5. The basis of calculation for the settlement provided in this Article will be the United States dollar at its gold parity on July 1, 1946, *i.e.* \$35 for one ounce of gold.

6. Claims of the States mentioned in paragraph 1 of part B of this Article, in excess of the amounts of reparation specified in that paragraph, shall be satisfied out of the Italian assets subject to their respective jurisdictions under Article 79 of the present Treaty.

7. (a) The Four Ambassadors will coördinate and supervise the execution of the provisions of part B of this Article. They will consult with the Heads of the Diplomatic Missions in Rome of the States named in paragraph 1 of part B and, as circumstances may require, with the Italian Government, and advise them. For the purpose of this Article, the Four Ambassadors will continue to act until the expiration of the period for reparation deliveries provided in paragraph 1 of part B.

(b) With a view to avoiding conflict or overlapping in the allocation of Italian production and resources among the several States entitled to reparation under part B of this Article, the Four Ambassadors shall be informed by any one of the Governments entitled to reparation under part B of this Article and by the Italian Government of the opening of negotia-

tions for an agreement under paragraph 3 above and of the progress of such negotiations. In the event of any differences arising in the course of the negotiations the Four Ambassadors shall be competent to decide any point submitted to them by either Government or by any other Government entitled to reparation under part B of this Article.

(c) Agreements when concluded shall be communicated to the Four Ambassadors. The Four Ambassadors may recommend that an agreement which is not, or has ceased to be, in consonance with the objectives set out in paragraph 3 or sub-paragraph (b) above be appropriately modified.

C. Special Provision for Earlier Deliveries

With respect to deliveries from current industrial production, as provided in part A, paragraph 2 (c) and part B, paragraph 2 (b), nothing in either part A or part B of this Article shall be deemed to prevent deliveries during the first two years, if such deliveries are made in accordance with agreements between the Government entitled to reparation and the Italian Government.

D. Reparation for Other States

1. Claims of the other Allied and Associated Powers shall be satisfied out of the Italian assets subject to their respective jurisdictions under Article 79 of the present Treaty.

2. The claims of any State which is receiving territories under the present Treaty and which is not mentioned in part B of this Article shall also be satisfied by the transfer to the said State, without payment, of the industrial installations and equipment situated in the ceded territories and employed in the distribution of water, and the production and distribution of gas and electricity, owned by any Italian company whose *siège social* is in Italy or is transferred to Italy, as well as by the transfer of all other assets of such companies in ceded territories.

3. Responsibility for the financial obligations secured by mortgages, liens and other charges on such property shall be assumed by the Italian Government.

E. Compensation for Property Taken for Reparation Purposes

The Italian Government undertakes to compensate all natural or juridical persons whose property is taken for reparation purposes under this Article.

Section II—Restitution by Italy

Article 75

1. Italy accepts the principles of the United Nations Declaration of January 5, 1943, and shall return, in the shortest possible time, property removed from the territory of any of the United Nations.

2. The obligation to make restitution applies to all identifiable property at present in Italy which was removed by force or duress by any of the Axis Powers from the territory of any of the United Nations, irrespective of any subsequent transactions by which the present holder of any such property has secured possession.

3. The Italian Government shall return the property referred to in this Article in good order and, in this connection, shall bear all costs in Italy relating to labour, materials and transport.

4. The Italian Government shall coöperate with the United Nations in, and shall provide at its own expense all necessary facilities for, the search for and restitution of property liable to restitution under this Article.

5. The Italian Government shall take the necessary measures to effect the return of property covered by this Article held in any third country by persons subject to Italian jurisdiction.

6. Claims for the restitution of property shall be presented to the Italian Government by the Government of the country from whose territory the property was removed, it being understood that rolling stock shall be regarded as having been removed from the territory to which it originally belonged. The period during which such claims may be presented shall be six months from the coming into force of the present Treaty.

7. The burden of identifying the property and of proving ownership shall rest on the claimant Government, and the burden of proving that the property was not removed by force or duress shall rest on the Italian Government.

8. The Italian Government shall restore to the Government of the United Nation concerned all monetary gold looted by or wrongfully removed to Italy or shall transfer to the Government of the United Nation concerned an amount of gold equal in weight and fineness to that looted or wrongfully removed. This obligation is recognised by the Italian Government to exist irrespective of any transfers or removals of gold from Italy to any other Axis Power or a neutral country.

9. If, in particular cases, it is impossible for Italy to make restitution of objects of artistic, historical or archaeological value, belonging to the cultural heritage of the United Nation from whose territory such objects were removed by force or duress by Italian forces, authorities or nationals, Italy shall transfer to the United Nation concerned objects of the same kind as, and of approximately equivalent value to, the objects removed, in so far as such objects are obtainable in Italy.

Section III—Renunciation of Claims by Italy

Article 76

1. Italy waives all claims of any description against the Allied and Associated Powers on behalf of the Italian Government or Italian nationals

arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Italy at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations, or actions of forces or authorities of Allied or Associated Powers in Italian territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Italy agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Italian ships or Italian goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Italian Government agrees to make equitable compensation in lire to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Italian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Italian territory.

3. Italy likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Italian Government or Italian nationals against any of the United Nations which broke off diplomatic relations with Italy and which took action in coöperation with the Allied and Associated Powers.

4. The Italian Government shall assume full responsibility for all Allied military currency issued in Italy by the Allied military authorities, including all such currency in circulation at the coming into force of the present Treaty.

5. The waiver of claims by Italy under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Italian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

6. The provisions of this Article shall not be deemed to affect the ownership of submarine cables which, at the outbreak of the war, were owned by the Italian Government or Italian nationals. This paragraph shall not preclude the application of Article 79 and Annex XIV to submarine cables.

Article 77

1. From the coming into force of the present Treaty property in Germany of Italy and of Italian nationals shall no longer be treated as enemy property and all restrictions based on such treatment shall be removed.

2. Identifiable property of Italy and of Italian nationals removed by force or duress from Italian territory to Germany by German forces or authorities after September 3, 1943, shall be eligible for restitution.

3. The restoration and restitution of Italian property in Germany shall be effected in accordance with measures which will be determined by the Powers in occupation of Germany.

4. Without prejudice to these and to any other dispositions in favour of Italy and Italian nationals by the Powers occupying Germany, Italy waives on its own behalf and on behalf of Italian nationals all claims against Germany and German nationals outstanding on May 8, 1945, except those arising out of contracts and other obligations entered into, and rights acquired, before September 1, 1939. This waiver shall be deemed to include debts, all inter-governmental claims in respect of arrangements entered into in the course of the war, and all claims for loss or damage arising during the war.

5. Italy agrees to take all necessary measures to facilitate such transfers of German assets in Italy as may be determined by those of the Powers occupying Germany which are empowered to dispose of the said assets.

PART VII

PROPERTY, RIGHTS AND INTEREST

Section I—United Nations Property in Italy

Article 78

1. In so far as Italy has not already done so, Italy shall restore all legal rights and interests in Italy of the United Nations and their nationals as they existed on June 10, 1940, and shall return all property in Italy of the United Nations and their nationals as it now exists.

2. The Italian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Italian Government in connection with their return. The Italian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between June 10, 1940, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Italian authorities not later than twelve months from the coming into force of the present Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Italian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations

nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

4. (a) The Italian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property can not be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Italy, he shall receive from the Italian Government compensation in lire to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Italian nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 9 (a) of this Article, but which have suffered a loss by reason of injury or damage to property in Italy, shall receive compensation in accordance with sub-paragraph (a) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Italy but shall be subject to the foreign exchange control regulations which may be in force in Italy from time to time.

(d) The Italian Government shall grant United Nations nationals an indemnity in lire at the same rate as provided in sub-paragraph (a) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Italian property. This sub-paragraph does not apply to a loss of profit.

5. All reasonable expenses incurred in Italy in establishing claims, including the assessment of loss or damage, shall be borne by the Italian Government.

6. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Italy by the Italian Government or any Italian authority between September 3, 1943, and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

7. Notwithstanding the territorial transfers provided in the present Treaty, Italy shall continue to be responsible for loss or damage sustained during the war by property in ceded territory or in the Free Territory of Trieste belonging to United Nations nationals. The obligations contained in paragraphs 3, 4, 5 and 6 of this Article shall also rest on the Italian

Government in regard to property in ceded territory and in the Free Territory of Trieste of United Nations nationals except in so far as this would conflict with the provisions of paragraph 14 of Annex X and paragraph 14 of Annex XIV of the present Treaty.

8. The owner of the property concerned and the Italian Government may agree upon arrangements in lieu of the provisions of this Article.

9. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organized under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status on September 3, 1943, the date of the Armistice with Italy.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Italy during the war, have been treated as enemy;

(b) "Owner" means the United Nations national, as defined in subparagraph (a) above, who is entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nations national as defined in subparagraph (a). If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property. Without prejudice to the generality of the foregoing provisions, the property of the United Nations and their nationals includes all seagoing and river vessels, together with their gear and equipment, which were either owned by United Nations or their nationals, or registered in the territory of one of the United Nations, or sailed under the flag of one of the United Nations and which, after June 10, 1940, while in Italian waters, or after they had been forcibly brought into Italian waters, either were placed under the control of the Italian authorities as enemy property or ceased to be at the free disposal in Italy of the United Nations or their nationals, as a result of measures of control taken by the Italian authorities in relation to the existence of a state of war between members of the United Nations and Germany.

Section II—Italian Property in the Territory of Allied and Associated Powers

Article 79

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or taken any other action with respect to all prop-

erty, rights and interests which on the coming into force of the present Treaty are within its territory and belong to Italy or to Italian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Italy or Italian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Italian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.

2. The liquidation and disposition of Italian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Italian owner shall have no rights with respect to such property except those which may be given him by that law.

3. The Italian Government undertakes to compensate Italian nationals whose property is taken under this Article and not returned to them.

4. No obligation is created by this Article on any Allied or Associated Power to return industrial property to the Italian Government or Italian nationals, or to include such property in determining the amounts which may be retained under paragraph 1 of this Article. The Government of each of the Allied and Associated Powers shall have the right to impose such limitations, conditions and restrictions on rights or interests with respect to industrial property in the territory of that Allied or Associated Power, acquired prior to the coming into force of the present Treaty by the Government or nationals of Italy, as may be deemed by the Government of the Allied or Associated Power to be necessary in the national interest.

5. (a) Italian submarine cables connecting points in Yugoslavia shall be deemed to be Italian property in Yugoslavia, despite the fact that lengths of these cables may lie outside the territorial waters of Yugoslavia.

(b) Italian submarine cables connecting a point in the territory of an Allied or Associated Power with a point in Italian territory shall be deemed to be Italian property within the meaning of this Article so far as concerns the terminal facilities and the lengths of cables lying within territorial waters of that Allied or Associated Power.

6. The property covered by paragraph 1 of this Article shall be deemed to include Italian property which has been subject to control by reason of a state of war existing between Italy and the Allied or Associated Power having jurisdiction over the property, but shall not include:

(a) Property of the Italian Government used for consular or diplomatic purposes;

(b) Property belonging to religious bodies or private charitable institutions and used exclusively for religious or charitable purposes;

(c) Property of natural persons who are Italian nationals permitted to reside within the territory of the country in which the property is located or to reside elsewhere in United Nations territory, other than Italian property which at any time during the war was subjected to measures not gen-

erally applicable to the property of Italian nationals resident in the same territory;

(d) Property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and Italy, or arising out of transactions between the Government of any Allied or Associated Power and Italy since September 3, 1943;

(e) Literary and artistic property rights;

(f) Property in ceded territories of Italian nationals, to which the provisions of Annex XIV shall apply;

(g) With the exception of the assets indicated in Article 74, part A, paragraph 2(b) and part D, paragraph 1, property of natural persons residing in ceded territories or in the Free Territory of Trieste who do not opt for Italian nationality under the present Treaty, and property of corporations or associations having *siège social* in ceded territories or in the Free Territory of Trieste, provided that such corporations or associations are not owned or controlled by persons in Italy. In the cases provided under Article 74, part A, paragraph 2(b), and part D, paragraph 1, the question of compensation will be dealt with under Article 74, part E.

Section III—Declaration of the Allied and Associated Powers in Respect of Claims

Article 80

The Allied and Associated Powers declare that the rights attributed to them under Articles 74 and 79 of the present Treaty cover all their claims and those of their nationals for loss or damage due to acts of war, including measures due to the occupation of their territory, attributable to Italy and having occurred outside Italian territory, with the exception of claims based on Articles 75 and 78.

Section IV—Debts

Article 81

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present Treaty, and which are due by the Government or nationals of Italy to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Italy.

2. Except as otherwise expressly provided in the present Treaty, nothing therein shall be construed as impairing debtor-creditor relationships arising out of pre-war contracts concluded either by the Government or nationals of Italy.

PART VIII

GENERAL ECONOMIC RELATIONS

Article 82

1. Pending the conclusion of commercial treaties or agreements between individual United Nations and Italy, the Italian Government shall, during a period of eighteen months from the coming into force of the present Treaty, grant the following treatment to each of the United Nations which, in fact, reciprocally grants similar treatment in like matters to Italy:

(a) In all that concerns duties and charges on importation or exportation, the internal taxation of imported goods and all regulations pertaining thereto, the United Nations shall be granted unconditional most-favoured nation treatment;

(b) In all other respects, Italy shall make no arbitrary discrimination against goods originating in or destined for any territory of any of the United Nations as compared with like goods originating in or destined for territory of any other of the United Nations or of any other foreign country;

(c) United Nations nationals, including juridical persons, shall be granted national and most-favoured-nation treatment in all matters pertaining to commerce, industry, shipping and other forms of business activity within Italy. These provisions shall not apply to commercial aviation;

(d) Italy shall grant no exclusive or discriminatory right to any country with regard to the operation of commercial aircraft in international traffic, shall afford all the United Nations equality of opportunity in obtaining international commercial aviation rights in Italian territory, including the right to land for refueling and repair, and, with regard to the operation of commercial aircraft in international traffic, shall grant on a reciprocal and non-discriminatory basis to all United Nations the right to fly over Italian territory without landing. These provisions shall not affect the interests of the national defense of Italy.

2. The foregoing undertakings by Italy shall be understood to be subject to the exceptions customarily included in commercial treaties concluded by Italy before the war; and the provisions with respect to reciprocity granted by each of the United Nations shall be understood to be subject to the exceptions customarily included in the commercial treaties concluded by that State.

PART IX

SETTLEMENT OF DISPUTES

Article 83

1. Any disputes which may arise in giving effect to Articles 75 and 78 and Annexes XIV, XV, XVI and XVII, part B, of the present Treaty shall be referred to a Conciliation Commission consisting of one representative

of the Government of the United Nation concerned and one representative of the Government of Italy, having equal status. If within three months after the dispute has been referred to the Conciliation Commission no agreement has been reached, either Government may ask for the addition to the Commission of a third member selected by mutual agreement of the two Governments from nationals of a third country. Should the two Governments fail to agree within two months on the selection of a third member of the Commission, the Governments shall apply to the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, who will appoint the third member of the Commission. If the Ambassadors are unable to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. When any Conciliation Commission is established under paragraph 1 above, it shall have jurisdiction over all disputes which may thereafter arise between the United Nations concerned and Italy in the application or interpretation of Articles 75 and 78 and Annexes XIV, XV, XVI, and XVII, part B, of the present Treaty, and shall perform the functions attributed to it by those provisions.

3. Each Conciliation Commission shall determine its own procedure, adopting rules conforming to justice and equity.

4. Each Government shall pay the salary of the member of the Conciliation Commission whom it appoints and of any agent whom it may designate to represent it before the Commission. The salary of the third member shall be fixed by special agreement between the Governments concerned and this salary, together with the common expenses of each Commission, shall be paid in equal shares by the two Governments.

5. The parties undertake that their authorities shall furnish directly to the Conciliation Commission all assistance which may be within their power.

6. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

PART X

MISCELLANEOUS ECONOMIC PROVISIONS

Article 84

Articles 75, 78, 82 and Annex XVII of the present Treaty shall apply to the Allied and Associated Powers and to those of the United Nations which broke off diplomatic relations with Italy or with which Italy broke off diplomatic relations. These Articles and this Annex shall also apply to Albania and Norway.

Article 85

The provisions of Annexes VIII, X, XIV, XV, XVI, XVII shall, as in the case of the other Annexes, have force and effect as integral parts of the present Treaty.

PART XI**FINAL CLAUSES***Article 86*

1. For a period not to exceed eighteen months from the coming into force of the present Treaty, the Ambassadors in Rome of the Soviet Union, of the United Kingdom, of the United States of America, and of France, acting in concert, will represent the Allied and Associated Powers in dealing with the Italian Government in all matters concerning the execution and interpretation of the present Treaty.

2. The Four Ambassadors will give the Italian Government such guidance, technical advice and clarification as may be necessary to ensure the rapid and efficient execution of the present Treaty both in letter and in spirit.

3. The Italian Government shall afford to the said Four Ambassadors all necessary information and any assistance which they may require in the fulfilment of the tasks devolving on them under the present Treaty.

Article 87

1. Except where another procedure is specifically provided under any Article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the Four Ambassadors acting under Article 86 except that in this case the Ambassadors will not be restricted by the time limit provided in that Article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 88

1. Any member of the United Nations, not a signatory to the present Treaty, which is at war with Italy, and Albania, may accede to the Treaty

and upon accession shall be deemed to be an Associated Power for the purposes of the Treaty.

2. Instruments of accession shall be deposited with the Government of the French Republic and shall take effect upon deposit.

Article 89

The provisions of the present Treaty shall not confer any rights or benefits on any State named in the Preamble as one of the Allied and Associated Powers or on its nationals until such State becomes a party to the Treaty by deposit of its instrument of ratification.

Article 90

The present Treaty, of which the French, English and Russian texts are authentic, shall be ratified by the Allied and Associated Powers. It shall also be ratified by Italy. It shall come into force immediately upon the deposit of ratifications by the Union of Soviet Socialist Republics, by the United Kingdom of Great Britain and Northern Ireland, by the United States of America and by France. The instruments of ratification shall, in the shortest time possible, be deposited with the Government of the French Republic.

With respect to each Allied or Associated Power whose instrument of ratification is thereafter deposited, the Treaty shall come into force upon the date of deposit. The present Treaty shall be deposited in the archives of the Government of the French Republic, which shall furnish certified copies to each of the signatory States.

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ANNEX II

Franco-Italian Frontier

*Detailed description of the sections of the frontier to which
the modifications set out in Article 2 apply*

Little Saint Bernard Pass

Reference: 1:20,000 map: Ste. Foy Tarentaise Nos. 1-2

The new frontier follows a line which starts from the rocky ridge of Lancebranlette, then, descending towards the east, follows the line of the watershed to the 2,180 meter level, whence it passes to the Colonna Joux (2188). From there, still following the line of the watershed, it reascends on to Costa del Belvedere, the rocky outcrops of which it follows, climbs

Mt. Belvedere, skirting its summit and leaving the latter in French territory 120 meters away from the frontier and, passing through points 2570, 2703, Bella Valletta and point 2746, it rejoins the old frontier at Mt. Valaisan.

Mont Cenis Plateau

Reference: 1:20,000 map: Lanslebourg, Nos. 5-6 and 7-8 and of Mont D'Ambin, Nos. 1-2

The new frontier follows a line which leaves the old frontier at Mt. Tour, follows westwards the administrative boundary shown on the map, follows the Vitoun as soon as it meets on its northern branch and descends along it as far as Rocca della Torretta.

Then following the line of rocky outcrops, it reaches the stream coming from the Alpe Lamet and descends with it as far as the base of the rocky escarpment along which it runs for about 800 meters as far as the thalweg at a point situated about 200 meters north of point 1805.

Then it mounts to the top of the landslips which overlook Ferrera Cenisio about 300 meters away and, continuing westwards, meets the road which skirts the east of Rne. Paradiso 400 meters west of the loop (1854), leaving it immediately and bending southwards.

It cuts the Bar Cenisia road at a point about 100 meters southeast of Refuge 5, crosses the thalweg in the direction of Lago S. Giorgio, roughly follows contour 1900 as far as point 1907, then skirts the southern side of Lago d'Arpon and rejoins the rocky ridge on which it remains in a south-westerly direction as far as the confluence of the streams coming from the Bard glacier (Ghiacciaio di Bard) at a point approximately 1,400 meters southwest of Lago d'Arpon.

From there, bending southwards, it roughly follows contour 2500, goes as far as point 2579, then, running along contour 2600, it reaches the Lago della Vecchia and rejoins, at the administrative boundary marked on the map about 700 meters southeast of the lake, the Pso. d'Avanza path, which it follows along the rocky escarpments to the old frontier, half-way between the Col della Vecchia and the Col de Clapier.

Mont Thabor

Reference: 1:20,000 map: Nevache, 1-2, 5-6, and 7-8

From Cima de la Planette to Rocher de Guion (Cima del Sueur)

The new frontier follows a line which leaves the present frontier at Cima de la Planette and, proceeding southwards, follows the ridge through points 2980, 3178, Rea. Bernaude (3228), points 2842, 2780, 2877, Pso. della Gallina (2671), points 2720, 2806 and Pta. Quattro Sorelle (2700).

Descending the eastern slope of this summit, the line leaves in French territory point 2420, whence it rejoins and follows on the east the path

leading to the buildings situated about 200 meters from point 2253, this path and these buildings being left in French territory. It then enters a thalweg, passing about 300 meters northeast of point 1915, whence it reaches the northwestern edge of the reservoir which, in the Vallee Etroite (Valle Stretta) feeds the hydro-electric installations of Sette Fontane, leaving this reservoir and these installations in Italian territory. Skirting the reservoir on the south, it reaches the crossroads at point 1499.

Thence it follows the path which hugs the edge of the woods along contour 1500 and which leads it to Comba della Gorgia near the 1580 contour; then it ascends the thalweg towards point 1974 and joins the edge of the rocky escarpments of La Sueur as marked by points 2272, 2268, 2239, 2266, 2267, remaining on this edge until it meets the old frontier, the crest of the rocks and the path bordering it remaining in French territory.

Chaberton

Reference: 1:20,000 map: Briançon, Nos. 3-4

The new frontier follows a line which leaves the old frontier at point 3042 (north of point 3070 and north of Pointe des Trois Seies) and follows the rocky ridge as far as Croce del Vallonetto.

From the Croce del Vallonetto it bends towards the south along the rocky ridge and meets the Chaberton road at the point where the latter enters the *cirque* of the Clot des Morts.

Crossing this road and the thalweg which borders it, the line roughly follows, for 1250 meters, contour 2300 which, on the ground, follows to the southeast a series of rocky outcrops and debris, then it cuts straight across the eastern slope of Mt. Chaberton, reaches a point about 400 meters west of point 2160 leaving in French territory the intermediate pylon of the cable railway which stands there.

Then it proceeds in a straight line, across a series of rocky barriers and steep ravines, towards the position (not marked on the map) of La Fontaine des Chamois, near point 2228 (about 1400 meters northeast of Clavières) which it skirts to the east, following the second bend of the road joining this position with the fortified barracks of Chaberton, on the road from Cézanne (Cesana) to Clavières, leaving the fortifications at La Fontaine des Chamois in French territory.

Thence following first in a southerly direction the commune boundary marked on the map, and then the rocky barrier about 400 meters north of the Clavières-Cézanne (Cesana) road, it bends towards the southwest, passing along the foot of the rocky cliffs, sufficiently far from the latter to allow the construction of a double-track road.

Skirting in this way to the north the village of Clavières, which is left in Italian territory, it meets the Rio Secco about 200 meters upstream from

the Clavières bridge and follows down its course, then that of Doire Ripaire (Doria Riparia) as far as the road from Clavières to Val Gimont, which is left to Italy, and follows this road as far as the bridge over the Gimont.

Proceeding up the course of the latter for about 300 meters, the line then leaves it and follows the mule-track which takes it to the upper pylon of the Clavières cable railway (Col du Mont Fort du Boeuf), which is left in French territory. Then, across the ridge, it rejoins the present frontier at Mont la Plane, frontier post 251. The road in the valley of the Gimont is left in Italian territory.

Upper Valleys of La Tinée, La Vesubie and La Roya

1. From Cime de Colla Longa to Cima di Mercantour

References: 1:20,000 maps: St. Etienne de Tinée, Nos. 3-4 and 7-8, Les Trois Ponts, Nos. 5-6.

The new frontier follows a line which leaves the old frontier at Cime de Colla Longa and proceeding eastwards and following the line of the watershed, skirts the rocky ridge, passing through points 2719, 2562, Cle. di Seccia, reaches at point 2760 the Testa dell'Autaret, passes to point 2672, to the Cle. della Guercia (2456) and through points 2640, 2693, 2689, reaches Rocche di Saboulé and follows the northern ridge thereof.

Following the ridge, it passes through points 2537, 2513, Pso. del Lausfer (2461) and point 2573 to Testa Auta del Lausfer (2587) whence it bends southwards as far as Testa Colla Auta, passing Cima del Lausfer (2544), leaving the latter point in Italy.

Thence through point 2484, and along the ridge path which is left in French territory, through points 2240 and 2356, it crosses the Passo di S. Anna, and passing through points 2420 and 2407 it reaches a point about 80 meters south of point 2378 (Cima Moravacciera).

Following the ridge path left in French territory, it passes through Testa Ga del Caval and point 2331, both left in French territory, then leaving the path it continues on the ridge of Testa del'Adreck (2475) and through Cle. della Lombarda and point 2556 and arrives at Cima della Lombarda (2801).

Bending southeastwards, it then follows the rocky ridge and passing through Pso. di Peania, Cima di Vermeil, point 2720 left in French territory, Testa Cba. Grossa (2792), Pso. del Lupo (2730) and point 2936, reaches Mt. Malinvern.

Thence, in a southerly direction, through points 2701, 2612 and Cima di Tavel (2804), then in an easterly direction through point 2823, it reaches Testa del Claus (2889).

Then, bending in a general southeasterly direction, it crosses Passo delle Portette, passes to point 2814, to Testa delle Portette, to point 2868,

to Testa Margiola (2831), to Caire di Prefouns (2840), to Passo del Prefouns (2620), to Testa di Tablasses (2851), to Passo di Bresses (2794), to Testa di Bresses (2820), and passing through Cima di Fremamorta (2731), Cle. Fremamorta, point 2625, point 2675, and point 2539, Cima di Pagari (2686), Cima di Naucetas (2706), points 2660 and 2673, Cle. di Ciriogia (2581), reaches Cima di Mercantour (2775).

2. *From Cima di Mercantour to Mt. Clapier*

References: 1:20,000 map: Les Trois Ponts, Nos. 5-6 and the Italian 1:20,000 map: Madonna delle Finestre

From Cima di Mercantour, it proceeds through point 2705, Cle. Mercantour (2611), Cima Ghilie (2998), points 2939 and 2955, Testa della Rovina (2981), points 2844 and 2862, Paso della Rovina, Caire dell'Agnel (2935, 2867, 2784), Cima del Caire Agnel (2830), Cima Mallariva (2860), Cima Cairas (2831), Cima Cougourda (2881, 2921), Cima dei Gaisses (2896), points 2766, 2824, Cima del Lombard (2842), points 2831, 2717, 2591, 2600 and 2582, Boccia Forno, Cima delle Finestre (2657), Col delle Finestre, points 2634, 2686 and 2917 and reaches Cima dei Gelas (3143), then through point 3070 to Cima della Maledia (3061), from whence it skirts the Passo del Pagari (2819) path and then, following the commune boundary, shown on the map, it reaches the Passo di Mt. Clapier (2827), winds round the north and east of Mt. Clapier (3045) along the administrative boundary shown on the map.

3. *From Mt. Clapier to Colle di Tenda*

References: Italian 1:20,000 map: Madonna delle Finestre and Colle di Tenda

From Mt. Clapier the line follows the administrative boundary represented on the map by points 2915, 2887 and 2562, Passo dell'Agnel and point 2679, up to Cima dell'Agnel (2775).

The line then bears eastwards, still adhering to the administrative boundary represented on the map by points 2845 and 2843 of Ree. dell'Agnel; it then reaches Cima della Scandeiera (2706), crosses Cle. del Sabbione (2332), proceeds over points 2373, 2226, 2303, and 2313 to Cima del Sabbione (2610), point 2636, Pta. Peirafica, points 2609, 2585, 2572, 2550 and reaches Rea. dell'Abisso (2755).

The line still continues along the administrative boundary marked on the map up to the east of point 2360, then skirts the rocky outcrops north of Rne. Pian Misson, from whence it reaches the Mt. Becco Rosso path and follows it to the north of points 2181, 2116 and 1915 and then skirts the road for approximately 1 kilometer northwards before rejoining the above-mentioned path up to Colle di Tenda. The path and the section of highway mentioned above remain in French territory.

4. *From Colle di Tenda to Cima Missun*

Reference: Italian 1:20,000 map: Tenda and Certosa di Pesio

From Colle di Tenda the line, leaving the path in French territory, proceeds to points 1887 and 2206, then branches off the path to follow along the ridge the administrative boundary shown on the map, then passing through point 2262 reaches Cma. del Becco (2300).

Bearing northward and along the administrative boundary shown on the map it reaches the Col della Perla (2086), follows the path which skirts the rocky outcrop in Cma. del Cuni to Col della Boaira, where it leaves it to follow the ridge to the north. The above-mentioned path remains in French territory.

Skirting the rocky outcrop, it proceeds to point 2275, reaches Testa Ciaudon (2386), skirts the rocky escarpments, crosses Colla Piana (2219) and reaches point 2355 of Mt. Delle Carsene which is left on French soil, then it follows the northern ridge of this mountain over Pta. Straldi (2375), points 2321 and 2305 up to Pso. Scarason, then swerves northwards up to point 2352, where it meets the administrative boundary shown on the map and follows this boundary through points 2510 and 2532 up to Pta. Marguareis (2651).

Deviating southward it then follows the ridge, passes point 2585 and, passing down the rocky crest, reaches Colle del Lago dei Signori.

Following the path on the summit, which is left in French territory, then running along the crest proper, it comes to Cima di Pertega (2402), passes along the rocky ridge down to Cle. delle Vecchie (2106), whence it follows the summit path, which it leaves in French territory, through points 2190, 2162, Cima del Vescovo (2257) and Cima di Velega (2366) up to Mt. Bertrand.

From Mt. Bertrand (2481) it follows the administrative boundary shown on the map up to Cla. Rossa, where it rejoins the summit path which it then skirts passing through points 2179 and 2252 up to Cima Missun (2356), then, winding round the east of this mountain summit, the line follows the above-mentioned path which remains in French territory.

5. *From Cima Missun to Col de Pegairole*

References: 1:20,000 map: Pointe de Lugo, Nos. 1-2 and 5-6

Following the same summit path, the line crosses Cla Cravirora and passes east of point 2265 to Pta. Farenga. It then leaves the path and winds round Cma. Ventosa to the east, after which it joins the Passo di Tanarello path and leaves in France the constructions beside this path. The line then passes along Mt. Tanarello, crosses Passo Basera (2038), skirts Mt. Saccarello which is left approximately 300 meters to the westwards, then following first the rocky ridge and then the path up to Pso. di Collardente it

reaches the ridge which leads up to Mt. Collardente, leaving point 1762 on French territory. At this point it skirts a path which is left in Italian territory and comes to Mt. Collardente, leaving on French soil the path which crosses it. The line then follows this path through the Bassa di Sanson east and south of point 1769 up to the constructions, situated approximately 500 meters east of Testa della Nava (1934), which are left in French territory.

When it reaches these works, it leaves the road, rejoins at the ridge the road along the Testa della Nava ridge which remains in French territory, and follows it as far as the works to the southeast of the Cima di Marta or Mt. Vacche, skirting it from the east.

From there, passing along the ridge road left in French territory, it skirts Mt. Ceriana, leaves the road to reach Mt. Grai (2014) and joins it again at the col (1875), follows it to skirt Cima della Valetta and Mt. Pietravecchia as far as the rocky crest.

It then crosses Gola dell'Incisa, runs by way of the ridge and point 1759 to Mt. Toraggio (1972), then to Cima di Logambon and the Gola del Corvo, skirts Mt. Bauso and Mt. Lega (1552, 1563 and 1556) and follows the ridge downwards to Passo di Muratone.

Along the ridge road, left in French territory, it runs to Mt. Scarassan, to the south of Mt. Battolino and of point 1358 and reaches Cla. Pegairole.

6. From Cla. Pegairole to Mt. Mergo

References: 1:20,000 maps: Pointe de Lugo, Nos. 5-6, San Remo, Nos. 1-2 and Menton, Nos. 3-4

From Cla. Pegairole the line follows the administrative boundary marked on the map, leaving Cisterne to France, climbs Mt. Simonasso, drops as far as the col and follows the road to Margheria Suan which it leaves in French territory, the chalets remaining in Italian territory.

Continuing to follow the road, left in French territory, it passes to the east of Testa d'Alpe to Fontana dei Draghi, to the springs at point 1406, to point 1297, skirts Colla Sgora on the east, passes the points 1088, 1016, and 1026, crosses the rocky ridge of Mt. Colombin, follows the cantonal boundary shown on the map along Cima di Reglie (846 and 858), departs from this cantonal boundary in a southwesterly direction to follow the ridge of Serra dell'Arpetta (543, 474 and 416) down to the thalweg of the Roya, which it crosses about 200 meters northwest of the bridge of Fanghetto.

The line then ascends the thalweg of Roya to a point situated about 350 meters from the above-mentioned bridge. It leaves the Roya at this point and bears southwest to point 566. From this point it bears west until it meets the ravine descending to Olivetta which it follows as far as the road, leaving the dwellings on this road in Italian territory, mounts the Vle. di Trono for about 200 meters and then turns towards point 410 as far as the road from Olivetta to San Girolamo. Thence it runs southeast along this

road for about 100 meters and then bears generally southwest to point 403, running for about 20 meters along and to the south of the road marked on the map. From point 403, it follows the ridge of Pta Becche as far as point 379, then again bearing southwest, crosses the Bevera, following the thalweg towards Mt. Mergo which it skirts on the south at about 50 meters from the summit (686), left in French territory, and rejoins the present frontier at a point about 100 meters to the southwest of that summit.

ANNEX III

Guarantees in Connection with Mont Cenis and the Tenda-Briga District

(See Article 9)

A—GUARANTEES TO BE GIVEN BY FRANCE TO ITALY IN CONNECTION WITH THE CESSION OF THE PLATEAU OF MONT CENIS

I. *In Respect of Water Supplied from the Lake of Mont Cenis for Hydro- Electric Purposes*

(a) France shall so control the supply of water from the Lake of Mont Cenis to the underground conduits supplying the Gran Scala, Venaus and Mompantero hydro-electric plants, as to supply for those plants such quantities of water at such rates of flow as Italy may require.

(b) France shall repair and maintain in good and substantial condition and, as may be necessary, shall renew all the works required for the purposes of controlling and supplying the water in accordance with sub-paragraph (a) in so far as these works are within French territory.

(c) France shall inform Italy, as and when required by Italy, of the amount of water in the Lake of Mont Cenis and of any other information pertaining thereto, so as to enable Italy to determine the quantities of water and rates of flow to be supplied to the said underground conduits.

(d) France shall carry out the foregoing provisions with due regard for economy and shall charge Italy the actual cost incurred in so doing.

II. *In Respect of Electricity Produced at the Gran Scala Hydro-Electric Plant*

(a) France shall operate the Gran Scala hydro-electric plant so as to generate (subject to the control of the supply of water as provided in Guarantee I) such quantities of electricity at such rates of output as Italy may require after the local requirements (which shall not substantially exceed the present requirements) in the vicinity of Gran Scala within French territory have been met.

(b) France shall operate the pumping plant adjacent to the Gran Scala plant so as to pump water to the Lake of Mont Cenis as and when required by Italy.

(c) France shall repair and maintain in good and substantial condition and, as may be necessary, shall renew all the works comprising the Gran Scala hydro-electric plant and pumping plant together with the transmission line and equipment from the Gran Scala plant to the Franco-Italian frontier.

(d) France shall transmit over the transmission line from Gran Scala to the Franco-Italian frontier the electricity required by Italy as aforesaid, and shall deliver that electricity to Italy at the point at which that transmission line crosses the Franco-Italian frontier into Italian territory.

(e) France shall maintain the voltage and periodicity of the electricity supplied in accordance with the foregoing provisions at such levels as Italy may reasonably require.

(f) France shall arrange with Italy for telephone communication between Gran Scala and Italy and shall communicate with Italy in order to ensure that the Gran Scala plant, the pumping plant and transmission line are operated in such a manner as to comply with the foregoing guarantees.

(g) The price to be charged by France and paid by Italy for electricity available to Italy from the Gran Scala plant (after the local requirements as aforesaid have been met) shall be the same as the price charged in France for the supply of similar quantities of hydro-electricity in French territory in the neighbourhood of Mont Cenis or in other regions where conditions are comparable.

III. *Duration of Guarantees*

Unless otherwise agreed between France and Italy these guarantees will remain in force in perpetuity.

IV. *Supervisory Technical Commission*

A Franco-Italian Supervisory Technical Commission comprising an equal number of French and Italian members shall be established to supervise and facilitate the execution of the foregoing guarantees which are designed to secure the same facilities as Italy enjoyed in respect of hydro-electric and water supplies from the Lake of Mont Cenis before the cession of this region to France. It shall also be within the functions of the Supervisory Technical Commission to coöperate with the competent French technical services in order to ensure that the safety of the lower valleys is not endangered.

B—GUARANTEES TO BE GIVEN BY FRANCE TO ITALY IN CONNECTION WITH THE CESSION OF THE TENDA-BRIGA DISTRICT TO FRANCE

1. *Guarantees* to ensure to Italy the supply of electricity generated by the two $16\frac{2}{3}$ period generators of the hydro-electric plant at San Dalmazzo; and the supply of electricity generated at 50 periods at the hydro-electric

plants at Le Mesce, San Dalmazzo and Confine in excess of such amount thereof as may be required by France for supply to the Sospel, Menton and Nice areas until the complete reconstruction of the wrecked hydro-electric plants at Breil and Fontan, it being understood that such amount will decrease as reconstruction of these plants proceeds and will not exceed 5,000 KW in power and 3,000,000 KWH per month and that, if no special difficulties are encountered in the reconstruction, the work should be completed not later than the end of 1947:

- (a) France shall operate the said plants so as to generate (subject to such limitations as may be imposed by the amount of water available and taking into account as far as reasonably practicable the needs of the plants downstream) such quantities of electricity at such rates of output as Italy may require, firstly, at 16 $\frac{2}{3}$ periods for the Italian railways in Liguria and South Piedmont and secondly, at 50 periods for general purposes, after the requirements by France for Sospel, Menton and Nice, as aforesaid, and the local requirements in the vicinity of San Dalmazzo, have been met;
- (b) France shall repair and maintain in good and substantial condition and, as may be necessary, shall renew all the works comprising the Le Mesce, San Dalmazzo and Confine hydro-electric plants together with the transmission lines and equipment from the Le Mesce and Confine plants to the San Dalmazzo plant and also the main transmission lines and equipment from the San Dalmazzo plant to the Franco-Italian frontier;
- (c) France shall inform Italy, as and when required by Italy, of the rate of flow of water at Le Mesce and Confine and of the amount of water stored at San Dalmazzo and of any other information pertaining thereto so as to enable Italy to determine her electricity requirements as indicated in sub-paragraph (a);
- (d) France shall transmit over the main transmission lines from San Dalmazzo to the Franco-Italian frontier the electricity required by Italy as aforesaid, and shall deliver that electricity to Italy at the points at which those main transmission lines cross the Franco-Italian frontier into Italian territory;
- (e) France shall maintain the voltage and periodicity of the electricity supplied in accordance with the foregoing provisions at such levels as Italy may actually require;
- (f) France shall arrange with Italy for telephone communications between San Dalmazzo and Italy and shall communicate with Italy in order to ensure that the said hydro-electric plants and transmission lines are operated in such a manner as to comply with the foregoing guarantees.

2. *Guarantee* concerning the price to be charged by France to Italy for the electricity made available to Italy under paragraph 1 above until terminated in accordance with paragraph 3 below:

The price to be charged by France and paid by Italy for the electricity made available to Italy from the Le Mesce, San Dalmazzo and Confine hydro-electric plants after the requirements by France for Sospel, Menton and Nice and the local requirements in the vicinity of San Dalmazzo have been met as provided in sub-paragraph (a) of Guarantee 1, shall be the same as the price charged in France for the supply of similar quantities of hydro-electricity in French territory in the neighborhood of the Upper Valley of the Roya or in other regions where conditions are comparable.

3. *Guarantee* of a reasonable period of time for the supply of electricity by France to Italy:

Unless otherwise mutually agreed between France and Italy, Guarantees 1 and 2 shall remain in force until December 31, 1961, and shall terminate then or any subsequent December 31 if either country shall have given to the other at least two years notice in writing of its intention to terminate.

4. *Guarantee* of full and equitable utilization by France and Italy of the waters of the Roya and its tributaries for hydro-electric production:

(a) France shall operate the hydro-electric plants on the Roya in French territory, taking into account as far as reasonably practicable the needs of the plants downstream. France shall inform Italy in advance of the amount of water which it is expected will be available each day, and shall furnish any other information pertaining thereto;

(b) Through bilateral negotiations France and Italy shall develop a mutually agreeable, coördinated plan for the exploitation of the water resources of the Roya.

5. A commission or such other similar body as may be agreed shall be established to supervise the carrying out of the plan mentioned in sub-paragraph (b) of Guarantee 4 and to facilitate the execution of Guarantees 1-4.

ANNEX IV

Provisions Agreed upon by the Austrian and
Italian Governments on September 5, 1946

(Original English text as signed by the two Parties and communicated to the Paris Conference on September 6, 1946)

(See Article 10)

1. German-speaking inhabitants of the Bolzano Province and of the neighbouring bilingual townships of the Trento Province will be assured

complete equality of rights with the Italian-speaking inhabitants, within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element.

In accordance with legislation already enacted or awaiting enactment the said German-speaking citizens will be granted in particular:

- (a) elementary and secondary teaching in the mother-tongue;
- (b) parification of the German and Italian languages in public offices and official documents, as well as in bilingual topographing naming;
- (c) the right to reestablish German family names which were italianized in recent years;
- (d) equality of rights as regards the entering upon public offices, with a view to reaching a more appropriate proportion of employment between the two ethnical groups.

2. The populations of the above-mentioned zones will be granted the exercise of autonomous legislative and executive regional power. The frame within which the said provisions of autonomy will apply, will be drafted in consultation also with local representative German-speaking elements.

3. The Italian Government, with the aim of establishing good neighbourhood relations between Austria and Italy, pledges itself, in consultation with the Austrian Government and within one year from the signing of the present Treaty:

- (a) to revise in a spirit of equity and broadmindedness the question of the options for citizenship resulting from the 1939 Hitler-Mussolini agreements;
- (b) to find an agreement for the mutual recognition of the validity of certain degrees and University diplomas;
- (c) to draw up a convention for the free passengers and goods transit between northern and eastern Tyrol both by rail and, to the greatest possible extent, by road;
- (d) to reach special agreements aimed at facilitating enlarged frontier traffic and local exchanges of certain quantities of characteristic products and goods between Austria and Italy.

ANNEX V

Water Supply for Gorizia and Vicinity

(See Article 13)

1. Yugoslavia, as the owner, shall maintain and operate the springs and water supply installations at Fonte Fredda and Moncorona and shall maintain the supply of water to that part of the Commune of Gorizia, which, under the terms of the present Treaty, remains in Italy. Italy shall continue to maintain and operate the reservoir and water distribution system within Italian territory which is supplied by the above-mentioned springs.

and shall maintain the supply of water to those areas in Yugoslavia which, under the terms of the present Treaty, will be transferred to that State and which are supplied from Italian territory.

2. The water so supplied shall be in the amounts which have been customarily supplied to the region in the past. Should consumers in either State require additional supplies of water, the two Governments shall examine the matter jointly with a view to reaching agreement on such measures as may reasonably be required to satisfy these needs. Should there be a temporary reduction in the amount of water available due to natural causes, distribution of water from the above-named sources to the consumers in Yugoslavia and Italy shall be reduced in proportion to their respective previous consumption.

3. The charges to be paid by the Commune of Gorizia to Yugoslavia for the water supplied to it, and the charges to be paid by consumers in Yugoslav territory to the Commune of Gorizia, shall be based solely on the cost of operation and maintenance of the water supply system as well as new capital expenditures which may be required to give effect to these provisions.

4. Yugoslavia and Italy shall, within one month from the coming into force of the present Treaty, enter into an agreement to determine their respective responsibilities under the foregoing provisions and to establish the charges to be paid under these provisions. The two Governments shall establish a joint commission to supervise the execution of the said agreement.

5. Upon the expiration of a ten-year period from the coming into force of the present Treaty, Yugoslavia and Italy shall reexamine the foregoing provisions in the light of conditions at that time in order to determine whether any adjustments should be made in those provisions, and shall make such alterations and additions as they may agree. Any disputes which may arise as a result of this reexamination shall be submitted for settlement under the procedure outlined in Article 87 of the present Treaty.

ANNEX VI

Permanent Statute of the Free Territory of Trieste

(See Article 21)

Article 1. Area of Free Territory

The area of the Free Territory of Trieste shall be the territory within the frontiers described in Articles 4 and 22 of the present Treaty as delimited in accordance with Article 5 of the Treaty.

Article 2. Integrity and Independence

The integrity and independence of the Free Territory shall be assured by the Security Council of the United Nations Organization. This responsibility implies that the Council shall:

(a) ensure the observance of the present Statute and in particular the protection of the basic human rights of the inhabitants.

(b) ensure the maintenance of public order and security in the Free Territory.

Article 3. Demilitarisation and Neutrality

1. The Free Territory shall be demilitarised and declared neutral.
2. No armed forces, except upon direction of the Security Council, shall be allowed in the Free Territory.
3. No para-military formations, exercises or activities shall be permitted within the Free Territory.
4. The Government of the Free Territory shall not make or discuss any military arrangements or undertakings with any State.

Article 4. Human Rights and Fundamental Freedoms

The Constitution of the Free Territory shall ensure to all persons under the jurisdiction of the Free Territory, without distinction as to ethnic origin, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of religious worship, language, speech and publication, education, assembly and association. Citizens of the Free Territory shall be assured of equality of eligibility for public office.

Article 5. Civil and Political Rights

No person who has acquired the citizenship of the Free Territory shall be deprived of his civil or political rights except as judicial punishment for the infraction of the penal laws of the Free Territory.

Article 6. Citizenship

1. Italian citizens who were domiciled on June 10, 1940, in the area comprised within the boundaries of the Free Territory, and their children born after that date, shall become original citizens of the Free Territory with full civil and political rights. Upon becoming citizens of the Free Territory they shall lose their Italian citizenship.

2. The Government of the Free Territory shall, however, provide that the persons referred to in paragraph 1 over the age of eighteen years (or married persons whether under or over that age) whose customary language is Italian shall be entitled to opt for Italian citizenship within six months from the coming into force of the Constitution under conditions to be laid down therein. Any person so opting shall be considered to have re-acquired Italian citizenship. The option of the husband shall not constitute an option on the part of the wife. Option on the part of the father, or if the father is not alive, on the part of the mother, shall, however, automatically include all unmarried children under the age of eighteen years.

3. The Free Territory may require those who take advantage of the option to move to Italy within a year from the date on which the option was exercised.

4. The conditions for the acquisition of citizenship by persons not qualifying for original citizenship shall be determined by the Constituent Assembly of the Free Territory and embodied in the Constitution. Such conditions shall, however, exclude the acquisition of citizenship by members of the former Italian Fascist Police (O.V.R.A.) who have not been exonerated by the competent authorities, including the Allied Military Authorities who were responsible for the administration of the area.

Article 7. Official Languages

The official languages of the Free Territory shall be Italian and Slovene. The Constitution shall determine in what circumstances Croat may be used as a third official language.

Article 8. Flag and Coat-of-Arms

The Free Territory shall have its own flag and coat-of-arms. The flag shall be the traditional flag of the City of Trieste and the arms shall be its historic coat-of-arms.

Article 9. Organs of Government

For the government of the Free Territory there shall be a Governor, a Council of Government, a popular Assembly elected by the people of the Free Territory and a Judiciary, whose respective powers shall be exercised in accordance with the provisions of the present Statute and of the Constitution of the Free Territory.

Article 10. Constitution

1. The Constitution of the Free Territory shall be established in accordance with democratic principles and adopted by a Constituent Assembly with a two-thirds majority of the votes cast. The Constitution shall be made to conform to the provisions of the present Statute and shall not enter into force prior to the coming into force of the Statute.

2. If in the opinion of the Governor any provisions of the Constitution proposed by the Constituent Assembly or any subsequent amendments thereto are in contradiction to the Statute he may prevent their entry into force, subject to reference to the Security Council if the Assembly does not accept his views and recommendations.

Article 11. Appointment of the Governor

1. The Governor shall be appointed by the Security Council after consultation with the Governments of Yugoslavia and Italy. He shall not be

a citizen of Yugoslavia or Italy or of the Free Territory. He shall be appointed for five years and may be reappointed. His salary and allowances shall be borne by the United Nations.

2. The Governor may authorize a person selected by him to act for him in the event of his temporary absence or temporary inability to perform his duties.

3. The Security Council, if it considers that the Governor has failed to carry out his duties, may suspend him and, under appropriate safeguards of investigation and hearing, dismiss him from his office. In the event of his suspension or dismissal or in the event of his death or disability the Security Council may designate or appoint another person to act as Provisional Governor until the Governor recovers from his disability or a new Governor is appointed.

Article 12. Legislative Authority

The legislative authority shall be exercised by a popular Assembly consisting of a single chamber elected on the basis of proportional representation, by the citizens of both sexes of the Free Territory. The elections for the Assembly shall be conducted on the basis of universal, equal, direct and secret suffrage.

Article 13. Council of Government

1. Subject to the responsibilities vested in the Governor under the present Statute, executive authority in the Free Territory shall be exercised by a Council of Government which will be formed by the popular Assembly and will be responsible to the Assembly.

2. The Governor shall have the right to be present at all meetings of the Council of Government. He may express his views on all questions affecting his responsibilities.

3. When matters affecting their responsibilities are discussed by the Council of Government, the Director of Public Security and the Director of the Free Port shall be invited to attend meetings of the Council and to express their views.

Article 14. Exercise of Judicial Authority

The judicial authority in the Free Territory shall be exercised by tribunals established pursuant to the Constitution and laws of the Free Territory.

Article 15. Freedom and Independence of Judiciary

The Constitution of the Free Territory shall guarantee the complete freedom and independence of the Judiciary and shall provide for appellate jurisdiction.

Article 16. Appointment of Judiciary

1. The Governor shall appoint the Judiciary from among candidates proposed by the Council of Government or from among other persons, after consultation with the Council of Government, unless the Constitution provides for a different manner for filling judicial posts; and, subject to safeguards to be established by the Constitution, may remove members of the Judiciary for conduct incompatible with their judicial office.

2. The popular Assembly, by a two-thirds majority of votes cast, may request the Governor to investigate any charge brought against a member of the Judiciary which, if proved, would warrant his suspension or removal.

Article 17. Responsibility of the Governor to the Security Council

1. The Governor, as the representative of the Security Council, shall be responsible for supervising the observance of the present Statute including the protection of the basic human rights of the inhabitants and for ensuring that public order and security are maintained by the Government of the Free Territory in accordance with the present Statute, the Constitution and laws of the Free Territory.

2. The Governor shall present to the Security Council annual reports concerning the operation of the Statute and the performance of his duties.

Article 18. Rights of the Assembly

The popular Assembly shall have the right to consider and discuss any matters affecting the interests of the Free Territory.

Article 19. Enactment of Legislation

1. Legislation may be initiated by members of the popular Assembly and by the Council of Government as well as by the Governor in matters which in his view affect the responsibilities of the Security Council as defined in Article 2 of the present Statute.

2. No law shall enter into force until it shall have been promulgated. The promulgation of laws shall take place in accordance with the provisions of the Constitution of the Free Territory.

3. Before being promulgated legislation enacted by the Assembly shall be presented to the Governor.

4. If the Governor considers that such legislation is in contradiction to the present Statute, he may, within ten days following presentation of such legislation to him, return it to the Assembly with his comments and recommendations. If the Governor does not return the legislation within such ten days or if he advises the Assembly within such period that it calls for no comments or recommendation on his part, the legislation shall be promulgated forthwith.

5. If the Assembly makes manifest its refusal to withdraw legislation returned to the Assembly by the Governor or to amend it in conformity with his comments or recommendations, the Governor shall, unless he is prepared to withdraw his comments or recommendations, in which case the law shall be promulgated forthwith, immediately report the matter to the Security Council. The Governor shall likewise transmit without delay to the Security Council any communication which the Assembly may wish to make to the Council on the matter.

6. Legislation which forms the subject of a report to the Security Council under the provisions of the preceding paragraph shall only be promulgated by the direction of the Security Council.

*Article 20. Rights of the Governor with Respect to
Administrative Measures*

1. The Governor may require the Council of Government to suspend administrative measures which in his view conflict with his responsibilities as defined in the present Statute (observance of the Statute; maintenance of public order and security; respect for human rights). Should the Council of Government object, the Governor may suspend these administrative measures and the Governor or the Council of Government may refer the whole question to the Security Council for decision.

2. In matters affecting his responsibilities as defined in the Statute the Governor may propose to the Council of Government the adoption of any administrative measures. Should the Council of Government not accept such proposals the Governor may, without prejudice to Article 22 of the present Statute, refer the matter to the Security Council for decision.

Article 21. Budget

1. The Council of Government shall be responsible for the preparation of the budget of the Free Territory, including both revenue and expenditure, and for its submission to the popular Assembly.

2. If the Assembly should fail to vote the budget within the proper time limit, the provisions of the budget for the preceding period shall be applied to the new budgetary period until such time as the new budget shall have been voted.

Article 22. Special Powers of the Governor

1. In order that he may carry out his responsibilities to the Security Council under the present Statute, the Governor may, in cases which in his opinion permit of no delay, threatening the independence or integrity of the Free Territory, public order or respect of human rights, directly order and require the execution of appropriate measures subject to an immediate report thereon being made by him to the Security Council. In such circum-

stances the Governor may himself assume, if he deems it necessary, control of the security services.

2. The popular Assembly may petition the Security Council concerning any exercise by the Governor of his powers under paragraph 1 of this Article.

Article 23. Power of Pardon and Reprieve

The power of pardon and reprieve shall be vested in the Governor and shall be exercised by him in accordance with provisions to be laid down in the Constitution.

Article 24. Foreign Relations

1. The Governor shall ensure that the foreign relations of the Free Territory shall be conducted in conformity with the Statute, Constitution, and laws of the Free Territory. To this end the Governor shall have authority to prevent the entry into force of treaties or agreements affecting foreign relations which, in his judgment, conflict with the Statute, Constitution or laws of the Free Territory.

2. Treaties and agreements, as well as exequaturs and consular commissions, shall be signed jointly by the Governor and a representative of the Council of Government.

3. The Free Territory may be or become a party to international conventions or become a member of international organizations provided the aim of such conventions or organizations is to settle economic, technical, cultural, social or health questions.

4. Economic union or associations of an exclusive character with any State are incompatible with the status of the Free Territory.

5. The Free Territory of Trieste shall recognize the full force of the Treaty of Peace with Italy, and shall give effect to the applicable provisions of that Treaty. The Free Territory shall also recognize the full force of the other agreements or arrangements which have been or will be reached by the Allied and Associated Powers for the restoration of peace.

Article 25. Independence of the Governor and Staff

In the performance of their duties, the Governor and his staff shall not seek or receive instructions from any Government or from any other authority except the Security Council. They shall refrain from any act which might reflect on their position as international officials responsible only to the Security Council.

Article 26. Appointment and Removal of Administrative Officials

1. Appointments to public office in the Free Territory shall be made exclusively on the ground of ability, competence and integrity.

2. Administrative officials shall not be removed from office except for incompetence or misconduct and such removal shall be subject to appropriate safeguards of investigation and hearing to be established by law..

Article 27. Director of Public Security

1. The Council of Government shall submit to the Governor a list of candidates for the post of Director of Public Security. The Governor shall appoint the Director from among the candidates presented to him, or from among other persons, after consultation with the Council of Government. He may also dismiss the Director of Public Security after consultation with the Council of Government.

2. The Director of Public Security shall not be a citizen of Yugoslavia or Italy.

3. The Director of Public Security shall normally be under the immediate authority of the Council of Government from which he will receive instructions on matters within his competence.

4. The Governor shall:

- (a) receive regular reports from the Director of Public Security, and consult with him on any matters coming within the competence of the Director.
- (b) be informed by the Council of Government of its instructions to the Director of Public Security and may express his opinion thereon.

Article 28. Police Force

1. In order to preserve public order and security in accordance with the Statute, the Constitution and the laws of the Free Territory, the Government of the Free Territory shall be empowered to maintain a police force and security services.

2. Members of the police force and security services shall be recruited by the Director of Public Security and shall be subject to dismissal by him.

Article 29. Local Government

The Constitution of the Free Territory shall provide for the establishment on the basis of proportional representation of organs of local government on democratic principles, including universal, equal, direct and secret suffrage.

Article 30. Monetary System

The Free Territory shall have its own monetary system.

Article 31. Railways

Without prejudice to its proprietary rights over the railways within its boundaries and its control of the railway administration, the Free Territory

may negotiate with Yugoslavia and Italy agreements for the purpose of ensuring the efficient and economical operation of its railways. Such agreements would determine where responsibility lies for the operation of the railways in the direction of Yugoslavia or Italy respectively and also for the operation of the railway terminal of Trieste and of that part of the line which is common to all. In the latter case such operation may be effected by a special commission comprised of representatives of the Free Territory, Yugoslavia and Italy under the chairmanship of the representative of the Free Territory.

Article 32. Commercial Aviation

1. Commercial aircraft registered in the territory of any one of the United Nations which grants on its territory the same rights to commercial aircraft registered in the Free Territory, shall be granted international commercial aviation rights, including the right to land for refueling and repairs, to fly over the Free Territory without landing and to use for traffic purposes such airports as may be designated by the competent authorities of the Free Territory.

2. These rights shall not be subject to any restrictions other than those imposed on a basis of non-discrimination by the laws and regulations in force in the Free Territory and in the countries concerned or resulting from the special character of the Free Territory as neutral and demilitarized.

Article 33. Registration of Vessels

1. The Free Territory is entitled to open registers for the registration of ships and vessels owned by the Government of the Free Territory or by persons or organizations domiciled within the Free Territory.

2. The Free Territory shall open special maritime registers for Czechoslovak and Swiss ships and vessels upon request of these Governments, as well as for Hungarian and Austrian ships and vessels upon the request of these Governments after the conclusion of the Treaty of Peace with Hungary and the treaty for the reestablishment of the independence of Austria respectively. Ships and vessels entered in these registers shall fly the flags of their respective countries.

3. In giving effect to the foregoing provisions, and subject to any international convention which may be entered into concerning these questions, with the participation of the Government of the Free Territory, the latter shall be entitled to impose such conditions governing the registration, retention on and removal from the registers as shall prevent any abuses arising from the facilities thus granted. In particular as regards ships and vessels registered under paragraph 1 above, registration shall be limited to ships and vessels controlled from the Free Territory and regularly serving the needs or the interests of the Free Territory. In the case of ships and

vessels registered under paragraph 2 above, registration shall be limited to ships and vessels based on the Port of Trieste and regularly and permanently serving the needs of their respective countries through the Port of Trieste.

Article 34. Free Port

A free port shall be established in the Free Territory and shall be administered on the basis of the provisions of an international instrument drawn up by the Council of Foreign Ministers, approved by the Security Council, and annexed to the present Treaty (Annex VIII). The Government of the Free Territory shall enact all necessary legislation and take all necessary steps to give effect to the provisions of such instrument.

Article 35. Freedom of Transit

Freedom of transit shall, in accordance with customary international agreements, be assured by the Free Territory and the States whose territories are traversed to goods transported by railroad between the Free Port and the States which it serves, without any discrimination and without customs duties or charges other than those levied for services rendered.

Article 36. Interpretation of Statute

Except where another procedure is specifically provided under any Article of the present Statute, any dispute relating to the interpretation or execution of the Statute, not resolved by direct negotiations, shall, unless the parties mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 37. Amendment of Statute

This Statute shall constitute the permanent Statute of the Free Territory, subject to any amendment which may hereafter be made by the Security Council. Petitions for the amendment of the Statute may be presented to the Security Council by the popular Assembly upon a vote taken by a two-thirds majority of the votes cast.

Article 38. Coming into Force of Statute

The present Statute shall come into force on a date which shall be determined by the Security Council of the United Nations Organisation.

ANNEX VII

Instrument for the Provisional Regime
of the Free Territory of Trieste

(See Article 21)

The present provisions shall apply to the administration of the Free Territory of Trieste pending the coming into force of the Permanent Statute.

Article 1

The Governor shall assume office in the Free Territory at the earliest possible moment after coming into force of the present Treaty. Pending assumption of office by the Governor, the Free Territory shall continue to be administered by the Allied military commands within their respective zones.

Article 2

On assuming office in the Free Territory of Trieste the Governor shall be empowered to select from among persons domiciled in the Free Territory and after consultation with the Governments of Yugoslavia and Italy a Provisional Council of Government. The Governor shall have the right to make changes in the composition of the Provisional Council of Government whenever he deems it necessary. The Governor and the Provisional Council of Government shall exercise their functions in the manner laid down in the provisions of the Permanent Statute as and when these provisions prove to be applicable and in so far as they are not superseded by the present Instrument. Likewise all other provisions of the Permanent Statute shall be applicable during the period of the Provisional Regime as and when these provisions prove to be applicable and in so far as they are not superseded by the present Instrument. The Governor's actions will be guided mainly by the needs of the population and its well being.

Article 3

The seat of Government will be established in Trieste. The Governor will address his reports directly to the Chairman of the Security Council and will, through that channel, supply the Security Council with all necessary information on the administration of the Free Territory.

Article 4

The first concern of the Governor shall be to ensure the maintenance of public order and security. He shall appoint on a provisional basis a Director of Public Security, who will reorganize and administer the police force and security services.

Article 5

(a) From the coming into force of the present Treaty, troops stationed in the Free Territory shall not exceed 5,000 men for the United Kingdom, 5,000 men for the United States of America and 5,000 men for Yugoslavia.

(b) These troops shall be placed at the disposal of the Governor for a period of 90 days after his assumption of office in the Free Territory. As from the end of that period, they will cease to be at the disposal of the Governor and will be withdrawn from the Territory within a further period of 45 days, unless the Governor advises the Security Council that, in the interests of the Territory, some or all of them should not, in his view, be withdrawn. In the latter event, the troops required by the Governor shall remain until not later than 45 days after the Governor has advised the Security Council that the security services can maintain internal order in the Territory without the assistance of foreign troops.

(c) The withdrawal prescribed in paragraph (b) shall be carried out so as to maintain, in so far as possible, the ratio prescribed in paragraph (a) between the troops of the three Powers concerned.

Article 6

The Governor shall have the right at any time to call upon the Commanders of such contingents for support and such support shall be given promptly. The Governor shall, whenever possible, consult with the Commanders concerned before issuing his instructions but shall not interfere with the military handling of the forces in the discharge of his instructions. Each Commander has the right to report to his Government the instructions which he has received from the Governor, informing the Governor of the contents of such reports. The Government concerned shall have the right to refuse the participation of its forces in the operation in question, informing the Security Council accordingly.

Article 7

The necessary arrangements relating to the stationing, administration and supply of the military contingents made available by the United Kingdom, the United States of America, and Yugoslavia shall be settled by agreement between the Governor and the Commanders of those contingents.

Article 8

The Governor, in consultation with the Provisional Council of Government, shall be responsible for organizing the elections of Members of the Constituent Assembly in accordance with the conditions provided for in the Statute for elections to the popular Assembly.

The elections shall be held not later than four months after the Governor's assumption of office. In case this is technically impossible the Governor shall report to the Security Council.

Article 9

The Governor will, in consultation with the Provisional Council of Government, prepare the provisional budget and the provisional export and import programmes and will satisfy himself that appropriate arrangements are made by the Provisional Council of Government for the administration of the finances of the Free Territory.

Article 10

Existing laws and regulations shall remain valid unless and until revoked or suspended by the Governor. The Governor shall have the right to amend existing laws and regulations and to introduce new laws and regulations in agreement with the majority of the Provisional Council of Government. Such amended and new laws and regulations, as well as the acts of the Governor in regard to the revocation or suspension of laws and regulations, shall be valid unless and until they are amended, revoked or superseded by acts of the popular Assembly or the Council of Government within their respective spheres after the entry into force of the Constitution.

Article 11

Pending the establishment of a separate currency regime for the Free Territory the Italian lira shall continue to be the legal tender within the Free Territory. The Italian Government shall supply the foreign exchange and currency needs of the Free Territory under conditions no less favorable than those applying in Italy.

Italy and the Free Territory shall enter into an agreement to give effect to the above provisions as well as to provide for any settlement between the two Governments which may be required.

ANNEX VIII

Instrument for the Free Port of Trieste

Article 1

1. In order to ensure that the port and transit facilities of Trieste will be available for use on equal terms by all international trade and by Yugoslavia, Italy and the States of Central Europe, in such manner as is customary in other free ports of the world:

- (a) There shall be a customs free port in the Free Territory of Trieste within the limits provided for by or established in accordance with Article 3 of the present Instrument.
- (b) Goods passing through the Free Port of Trieste shall enjoy freedom of transit as stipulated in Article 16 of the present Instrument.

2. The international regime of the Free Port shall be governed by the provisions of the present Instrument.

Article 2

1. The Free Port shall be established and administered as a State corporation of the Free Territory, having all the attributes of a juridical person and functioning in accordance with the provisions of this Instrument.

2. All Italian state and para-statal property within the limits of the Free Port which, according to the provisions of the present Treaty, shall pass to the Free Territory shall be transferred, without payment, to the Free Port.

Article 3

1. The area of the Free Port shall include the territory and installations of the free zones of the port of Trieste within the limits of the 1939 boundaries.

2. The establishment of special zones in the Free Port under the exclusive jurisdiction of any State is incompatible with the status of the Free Territory and of the Free Port.

3. In order, however, to meet the special needs of Yugoslav and Italian shipping in the Adriatic, the Director of the Free Port, on the request of the Yugoslav or Italian Government and with the concurring advice of the International Commission provided for in Article 21 below, may reserve to merchant vessels flying the flags of either of these two States the exclusive use of berthing spaces within certain parts of the area of the Free Port.

4. In case it shall be necessary to increase the area of the Free Port such increase may be made upon the proposal of the Director of the Free Port by decision of the Council of Government with the approval of the popular Assembly.

Article 4

Unless otherwise provided for by the present Instrument the laws and regulations in force in the Free Territory shall be applicable to persons and property within the boundaries of the Free Port and the authorities responsible for their application in the Free Territory shall exercise their functions within the limits of the Free Port.

Article 5

1. Merchant vessels and goods of all countries shall be allowed unrestricted access to the Free Port for loading and discharge both for goods in transit and goods destined for or proceeding from the Free Territory.

2. In connection with importation into or exportation from or transit through the Free Port, the authorities of the Free Territory shall not levy on such goods customs duties or charges other than those levied for services rendered.

3. However, in respect of goods, imported through the Free Port for consumption within the Free Territory or exported from this Territory

through the Free Port, appropriate legislation and regulations in force in the Free Territory shall be applied.

Article 6

Warehousing, storing, examining, sorting, packing and repacking and similar activities which have customarily been carried on in the free zones of the port of Trieste shall be permitted in the Free Port under the general regulations established by the Director of the Free Port.

Article 7

1. The Director of the Free Port may also permit the processing of goods in the Free Port.

2. Manufacturing activities in the Free Port shall be permitted to those enterprises which existed in the free zones of the port of Trieste before the coming into force of the present Instrument. Upon the proposal of the Director of the Free Port, the Council of Government may permit the establishment of new manufacturing enterprises within the limits of the Free Port.

Article 8

Inspection by the authorities of the Free Territory shall be permitted within the Free Port to the extent necessary to enforce the customs or other regulations of the Free Territory for the prevention of smuggling.

Article 9

1. The authorities of the Free Territory will be entitled to fix and levy harbour dues in the Free Port.

2. The Director of the Free Port shall fix all charges for the use of the facilities and services of the Free Port. Such charges shall be reasonable and be related to the cost of operation, administration, maintenance and development of the Free Port.

Article 10

In the fixing and levying in the Free Port of harbour dues and other charges under Article 9 above, as well as in the provision of the services and facilities of the Free Port, there shall be no discrimination in respect of the nationality of the vessels, the ownership of the goods or on any other grounds.

Article 11

The passage of all persons into and out of the Free Port area shall be subject to such regulations as the authorities of the Free Territory shall establish. These regulations, however, shall be established in such a man-

ner as not unduly to impede the passage into and out of the Free Port of nationals of any State who are engaged in any legitimate pursuit in the Free Port area.

Article 12

The rules and bye-laws operative in the Free Port and likewise the schedules of charges levied in the Free Port must be made public.

Article 13

Coastwise shipping and coastwise trade within the Free Territory shall be carried on in accordance with regulations issued by the authorities of the Free Territory, the provisions of the present Instrument not being deemed to impose upon such authorities any restrictions in this respect.

Article 14

Within the boundaries of the Free Port, measures for the protection of health and measures for combating animal and plant diseases in respect of vessels and cargoes shall be applied by the authorities of the Free Territory.

Article 15

It shall be the duty of the authorities of the Free Territory to provide the Free Port with water supplies, gas, electric light and power, communications, drainage facilities and other public services and also to ensure police and fire protection.

Article 16

1. Freedom of transit shall, in accordance with customary international agreements, be assured by the Free Territory and the States whose territories are traversed to goods transported by railroad between the Free Port and the States which it serves, without any discrimination and without customs duties or charges other than those levied for services rendered.

2. The Free Territory and the States assuming the obligations of the present Instrument through whose territory such traffic passes in transit in either direction shall do all in their power to provide the best possible facilities in all respects for the speedy and efficient movement of such traffic at a reasonable cost, and shall not apply with respect to the movement of goods to and from the Free Port any discriminatory measures with respect to rates, services, customs, sanitary, police or any other regulations.

3. The States assuming the obligations of the present Instrument shall take no measures regarding regulations or rates which would artificially divert traffic from the Free Port for the benefit of other seaports. Measures taken by the Government of Yugoslavia to provide for traffic to ports in

southern Yugoslavia shall not be considered as measures designed to divert traffic artificially.

Article 17

The Free Territory and the States assuming the obligations of the present Instrument shall, within their respective territories and on non-discriminatory terms, grant in accordance with customary international agreements freedom of postal, telegraphic, and telephonic communications between the Free Port area and any country for such communications as originate in or are destined for the Free Port area.

Article 18

1. The administration of the Free Port shall be carried on by the Director of the Free Port who will represent it as a juridical person. The Council of Government shall submit to the Governor a list of qualified candidates for the post of Director of the Free Port. The Governor shall appoint the Director from among the candidates presented to him after consultation with the Council of Government. In case of disagreement the matter shall be referred to the Security Council. The Governor may also dismiss the Director upon the recommendation of the International Commission or the Council of Government.

2. The Director shall not be a citizen of Yugoslavia or Italy.

3. All other employees of the Free Port will be appointed by the Director. In all appointments of employees preference shall be given to citizens of the Free Territory.

Article 19

Subject to the provisions of the present Instrument, the Director of the Free Port shall take all reasonable and necessary measures for the administration, operation, maintenance and development of the Free Port as an efficient port adequate for the prompt handling of all the traffic of that port. In particular, the Director shall be responsible for the execution of all kinds of port works in the Free Port, shall direct the operation of port installations and other port equipment, shall establish, in accordance with legislation of the Free Territory, conditions of labour in the Free Port, and shall also supervise the execution in the Free Port of orders and regulations of the authorities of the Free Territory in respect to navigation.

Article 20

1. The Director of the Free Port shall issue such rules and bye-laws as he considers necessary in the exercise of his functions as prescribed in the preceding Article.

2. The autonomous budget of the Free Port will be prepared by the Director, and will be approved and applied in accordance with legislation to be established by the popular Assembly of the Free Territory.

3. The Director of the Free Port shall submit an annual report on the operations of the Free Port to the Governor and the Council of Government of the Free Territory. A copy of the report shall be transmitted to the International Commission.

Article 21

1. There shall be established an International Commission of the Free Port, hereinafter called "the International Commission," consisting of one representative from the Free Territory and from each of the following States: France, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the United States of America, the People's Federal Republic of Yugoslavia, Italy, Czechoslovakia, Poland, Switzerland, Austria and Hungary, provided that such State has assumed the obligations of the present Instrument.

2. The representative of the Free Territory shall be the permanent Chairman of the International Commission. In the event of a tie in voting, the vote cast by the Chairman shall be decisive.

Article 22

The International Commission shall have its seat in the Free Port. Its offices and activities shall be exempt from local jurisdiction. The members and officials of the International Commission shall enjoy in the Free Territory such privileges and immunities as are necessary for the independent exercise of their functions. The International Commission shall decide upon its own secretariat, procedure and budget. The common expenses of the International Commission shall be shared by member States in an equitable manner as agreed by them through the International Commission.

Article 23

The International Commission shall have the right to investigate and consider all matters relating to the operation, use, and administration of the Free Port or to the technical aspects of transit between the Free Port and the States which it serves, including unification of handling procedures. The International Commission shall act either on its own initiative or when such matters have been brought to its attention by any State or by the Free Territory or by the Director of the Free Port. The International Commission shall communicate its views or recommendations on such matters to the State or States concerned, or to the Free Territory, or to the Director of the Free Port. Such recommendations shall be considered and the necessary measures shall be taken. Should the Free Territory or the State or States concerned deem, however, that such measures would be inconsistent with the provisions of the present Instrument, the matter may

at the request of the Free Territory or any interested State be dealt with as provided in Article 24 below.

Article 24

Any dispute relating to the interpretation or execution of the present Instrument, not resolved by direct negotiations, shall, unless the parties mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 25

Proposals for amendments to the present Instrument may be submitted to the Security Council by the Council of Government of the Free Territory or by three or more States represented on the International Commission. An amendment approved by the Security Council shall enter into force on the date determined by the Security Council.

Article 26

For the purposes of the present Instrument a State shall be considered as having assumed the obligations of this Instrument if it is a party to the Treaty of Peace with Italy or has notified the Government of the French Republic of its assumption of such obligations.

ANNEX IX

Technical Dispositions Regarding the Free Territory of Trieste

(See Article 21)

A. Water Supply to Northwestern Istria

Yugoslavia shall continue to supply water to the region of northwestern Istria within the Free Territory of Trieste from the spring of San Giovanni de Pinguento through the Quieto water supply system and from the spring of Santa Maria del Risano through the Risano system. The water so supplied shall be in such amounts, not substantially exceeding those amounts which have been customarily supplied to the region, and at such rates of flow, as the Free Territory may request, but within limits imposed by natural conditions. Yugoslavia shall maintain the water conduits, reser-

voirs, pumps, purifying systems and such other works within Yugoslav territory as may be required to fulfill this obligation. Temporary allowance must be made in respect of the foregoing obligations on Yugoslavia for necessary repair of war damage to water supply installations. The Free Territory shall pay a reasonable price for the water thus supplied, which price should represent a proportionate share, based on the quantity of water consumed within the Free Territory, of the total cost of operation and maintenance of the Quieto and the Risano water supply systems. Should, in the future, additional supplies of water be required by the Free Territory, Yugoslavia undertakes to examine the matter jointly with the authorities of the Free Territory and by agreement to take such measures as are reasonable to meet these requirements.

B. *Electricity Supplies*

1. Yugoslavia and Italy shall maintain the existing supply of electricity to the Free Territory of Trieste, furnishing to the Free Territory such quantities of electricity at such rates of output as the latter may require. The quantities furnished need not at first substantially exceed those which have been customarily supplied to the area comprised in the Free Territory, but Italy and Yugoslavia shall, on request of the Free Territory, furnish increasing amounts as the requirements of the Free Territory, grow, provided that any increase of more than 20% over the amount normally furnished to the Free Territory from the respective sources shall be the subject of an agreement between the interested Governments.

2. The price to be charged by Yugoslavia or by Italy and to be paid by the Free Territory for the electricity furnished to it shall be no higher than the price charged in Yugoslavia or in Italy for the supply of similar quantities of hydro-electricity from the same sources in Yugoslav or Italian territory.

3. Yugoslavia, Italy and the Free Territory shall exchange information continuously concerning the flow and storage of water and the output of electricity in respect of stations supplying the former Italian *compartimento* of Venezia Giulia, so that each of the three parties will be in a position to determine its requirements.

4. Yugoslavia, Italy and the Free Territory shall maintain in good and substantial condition all of the electrical plants, transmission lines, substations and other installations which are required for the continued supply of electricity to the former Italian *compartimento* of Venezia Giulia.

5. Yugoslavia shall ensure that the existing and any future power installations on the Isonzo (Soca) are operated so as to provide that such supplies of water as Italy may from time to time request may be diverted from the Isonzo (Soca) for irrigation in the region from Gorizia southward to the Adriatic. Italy may not claim the right to the use of water

from the Isonzo (Soca) in greater volume or under more favorable conditions than has been customary in the past.

6. Yugoslavia, Italy and the Free Territory shall, through joint negotiations, adopt a mutually agreeable convention in conformity with the foregoing provisions for the continuing operation of the electricity system which serves the former Italian *compartimento* of Venezia Giulia. A mixed commission with equal representation of the three Governments shall be established for supervising the execution of the obligations arising under paragraphs 1 to 5 above.

7. Upon the expiration of a ten-year period from the coming into force of the present Treaty, Yugoslavia, Italy and the Free Territory shall re-examine the foregoing provisions in the light of conditions at that time in order to determine which, if any, of the foregoing obligations are no longer required, and shall make such alterations, deletions and additions as may be agreed upon by the parties concerned. Any disputes which may arise as a result of this reexamination shall be submitted for settlement under the procedure outlined in Article 87 of the present Treaty.

C. Facilities for Local Frontier Trade

Yugoslavia and the Free Territory of Trieste, and Italy and the Free Territory of Trieste, shall, within one month of the coming into force of the present Treaty, undertake negotiations to provide arrangements which shall facilitate the movement across the frontiers between the Free Territory and the adjacent areas of Yugoslavia and Italy of foodstuffs and other categories of commodities which have customarily moved between those areas in local trade, provided these commodities are grown, produced or manufactured in the respective territories. This movement may be facilitated by appropriate measures, including the exemption of such commodities, up to agreed quantities or values, from tariffs, customs charges, and export or import taxes of any kind when such commodities are moving in local trade.

ANNEX X

Economic and Financial Provisions Relating to the Free Territory of Trieste

1. The Free Territory of Trieste shall receive, without payment, Italian State and para-statal property within the Free Territory.

The following are considered as State or para-statal property for the purposes of this Annex: movable and immovable property of the Italian State, of local authorities and of public institutions and publicly owned companies and associations, as well as movable and immovable property formerly belonging to the Fascist Party or its auxiliary organizations.

2. All transfers effected after September 3, 1943, of Italian State and para-statal property as defined in paragraph 1 above shall be deemed null

and void. This provision shall not, however, extend to lawful acts relating to current operations of State and para-statal agencies in so far as they concern the sale, within normal limits, of goods ordinarily produced by them or sold in the execution of normal commercial arrangements or in the normal course of governmental administrative activities.

3. Submarine cables owned by the Italian State or by Italian para-statal organizations shall fall within the provisions of paragraph 1 so far as concerns terminal facilities and the lengths of cables lying within territorial waters of the Free Territory.

4. Italy shall hand over to the Free Territory all relevant archives and documents of an administrative character or historical value concerning the Free Territory or relating to property transferred under paragraph 1 of this Annex. The Free Territory shall hand over to Yugoslavia all documents of the same character relating to territory ceded to Yugoslavia under the present Treaty, and to Italy all documents of the same character which may be in the Free Territory and which relate to Italian territory.

Yugoslavia declares herself ready to hand over to the Free Territory all archives and documents of an administrative character concerning and required exclusively for the administration of the Free Territory, which are of a kind which were usually held before September 3, 1943, by the local authorities having jurisdiction over what now forms part of the Free Territory.

5. The Free Territory shall be exempt from the payment of the Italian public debt, but shall assume the obligations of the Italian State towards holders who continue to reside in the Free Territory, or who, being juridical persons, retain their *siège social* or principal place of business there, in so far as these obligations correspond to that portion of this debt which has been issued prior to June 10, 1940, and is attributable to public works and civil administrative services of benefit to the said Territory but not attributable directly or indirectly to military purposes.

Full proof of the source of such holdings may be required from the holders.

Italy and the Free Territory shall conclude arrangements to determine the portion of the Italian public debt referred to in this paragraph and the methods for giving effect to these provisions.

6. The future status of external obligations secured by charges upon the property or revenues of the Free Territory shall be governed by further agreements between the parties concerned.

7. Special arrangements shall be concluded between Italy and the Free Territory to govern the conditions under which the obligations of Italian public or private social insurance organizations towards the inhabitants of the Free Territory, and a proportionate part of the reserves accumulated by the said organizations, shall be transferred to similar organizations in the Free Territory.

Similar arrangements shall also be concluded between the Free Territory and Italy, and between the Free Territory and Yugoslavia, to govern the obligations of public and private social insurance organizations whose *siège social* is in the Free Territory, with regard to policy holders or subscribers residing respectively in Italy or in territory ceded to Yugoslavia under the present Treaty.

Similar arrangements shall also be concluded between the Free Territory and Yugoslavia to govern the obligations of public and private social insurance organizations whose *siège social* is in territory ceded to Yugoslavia under the present Treaty, with regard to policy holders or subscribers residing in the Free Territory.

8. Italy shall continue to be liable for the payment of civil or military pensions earned, as of the coming into force of the present Treaty, for service under the Italian State, municipal or other local government authorities, by persons who under the Treaty acquire the nationality of the Free Territory, including pension rights not yet matured. Arrangements shall be concluded between Italy and the Free Territory providing for the method by which this liability shall be discharged.

9. The property, rights and interests of Italian nationals who became domiciled in the Free Territory after June 10, 1940, and of persons who opt for Italian citizenship pursuant to the Statute of the Free Territory of Trieste shall, provided they have been lawfully acquired, be respected in the same measure as the property, rights and interests of nationals of the Free Territory generally, for a period of three years from the coming into force of the Treaty.

The property, rights and interests within the Free Territory of other Italian nationals and also of Italian juridical persons, provided they have been lawfully acquired, shall be subject only to such legislation as may be enacted from time to time regarding the property of foreign nationals and juridical persons generally.

10. Persons who opt for Italian nationality and move to Italy shall be permitted, after the settlement of any debts or taxes due from them in the Free Territory, to take with them their movable property and transfer their funds, provided such property and funds were lawfully acquired. No export or import duties shall be imposed in connection with the moving of such property. Further, they shall be permitted to sell their movable and immovable property under the same conditions as nationals of the Free Territory.

The removal of property to Italy will be effected under conditions which will not be in contradiction to the Constitution of the Free Territory and in a manner which will be agreed upon between Italy and the Free Territory. The conditions and the time periods of the transfer of the funds, including the proceeds of sales, shall be determined in the same manner.

11. The property, rights and interests of former Italian nationals, resident in the Free Territory, who become nationals of the Free Territory under the present Treaty, existing in Italy at the coming into force of the Treaty, shall be respected by Italy in the same measure as the property, rights and interests of Italian nationals generally, for a period of three years from the coming into force of the Treaty.

Such persons are authorized to effect the transfer and the liquidation of their property, rights and interests under the same conditions as are provided for under paragraph 10 above.

12. Companies incorporated under Italian law and having *siège social* in the Free Territory, which wish to remove *siège social* to Italy or Yugoslavia, shall likewise be dealt with under the provisions of paragraph 10 above, provided that more than fifty per cent of the capital of the company is owned by persons usually resident outside the Free Territory, or by persons who move to Italy or Yugoslavia.

13. Debts owed by persons in Italy, or in territory ceded to Yugoslavia, to persons in the Free Territory, or by persons in the Free Territory to persons in Italy or in territory ceded to Yugoslavia, shall not be effected by the cession. Italy, Yugoslavia and the Free Territory undertake to facilitate the settlement of such obligations. As used in this paragraph, the term "persons" includes juridical persons.

14. The property in the Free Territory of any of the United Nations and its nationals, if not already freed from Italian measures of sequestration or control and returned to its owner, shall be returned in the condition in which it now exists.

15. Italy shall return property unlawfully removed after September 3, 1943, from the Free Territory to Italy. Paragraphs 2, 3, 4, 5 and 6 of Article 75 shall govern the application of this obligation except as regards property provided for elsewhere in this Annex.

The provisions of paragraphs 1, 2, 5 and 6 of Article 75 shall apply to the restitution by the Free Territory of property removed from the territory of any of the United Nations during the war.

16. Italy shall return to the Free Territory in the shortest possible time any ships in Italian possession which were owned on September 3, 1943, by natural persons resident in the Free Territory who acquire the nationality of the Free Territory under the present Treaty, or by Italian juridical persons having and retaining *siège social* in the Free Territory, except any ships which have been the subject of a bona fide sale.

17. Italy and the Free Territory, and Yugoslavia and the Free Territory, shall conclude agreements providing for a just and equitable apportionment of the property of any existing local authority whose area is divided by any frontier settlement under the present Treaty, and for a continuance to the inhabitants of necessary communal services not specifically covered in other parts of the Treaty.

Similar agreements shall be concluded for a just and equitable allocation of rolling stock and railway equipment and of dock and harbour craft and equipment, as well as for any other outstanding economic matters not covered by this Annex.

18. Citizens of the Free Territory shall, notwithstanding the transfer of sovereignty and any change of nationality consequent thereon, continue to enjoy in Italy all the rights in industrial, literary and artistic property to which they were entitled under the legislation in force in Italy at the time of the transfer.

The Free Territory shall recognize and give effect to rights of industrial, literary and artistic property existing in the Free Territory under Italian laws in force at the time of transfer, or to be reestablished or restored in accordance with Annex XV, part A of the present Treaty. These rights shall remain in force in the Free Territory for the same period as that for which they would have remained in force under the laws of Italy.

19. Any dispute which may arise in giving effect to this Annex shall be dealt with in the same manner as provided in Article 83 of the present Treaty.

20. Paragraphs 1, 3 and 5 of Article 76; Article 77; paragraph 3 of Article 78; Article 81; Annex XV, part A; Annex XVI and Annex XVII, part B, shall apply to the Free Territory in like manner as to Italy.

ANNEX XI

Joint Declaration by the Governments of the Soviet Union, of the United Kingdom, of the United States of America and of France
concerning Italian Territorial Possessions in Africa

(See Article 23)

1. The Governments of the Union of Soviet Socialist Republics, of the United Kingdom of Great Britain and Northern Ireland, of the United States of America, and of France agree that they will, within one year from the coming into force of the Treaty of Peace with Italy bearing the date of February 10, 1947, jointly determine the final disposal of Italy's territorial possessions in Africa, to which, in accordance with Article 23 of the Treaty, Italy renounces all right and title.

2. The final disposal of the territories concerned and appropriate adjustment of their boundaries shall be made by the Four Powers in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments.

3. If with respect to any of these territories the Four Powers are unable to agree upon their disposal within one year from the coming into force

of the Treaty of Peace with Italy, the matter shall be referred to the General Assembly of the United Nations for a recommendation, and the Four Powers agree to accept the recommendation and to take appropriate measures for giving effect to it.

4. The Deputies of the Foreign Ministers shall continue the consideration of the question of the disposal of the former Italian Colonies with a view to submitting to the Council of Foreign Ministers their recommendations on this matter. They shall also send out commissions of investigation to any of the former Italian Colonies in order to supply the Deputies with the necessary data on this question and to ascertain the views of the local population.

ANNEX XII

(See Article 56)

The names in this Annex are those which were used in the Italian Navy on June 1, 1946.

A. List of Naval Vessels to be Retained by Italy

MAJOR WAR VESSELS

<i>Battleships</i> . . .	Andrea Doria Caio Duilio	<i>Torpedo Boats</i>	Nicola Fabrizi (continued) Ernesto Giovannini Libra
<i>Cruisers</i>	Luigi di Savoia Duca degli Abruzzi Giuseppe Garibaldi Raimondo Montecuccoli Luigi Cadorna		Monzambano Antonio Mosto Orione Orsa Rosalino Pilo Sagittario Sirio
<i>Destroyers</i>	Carabiniere Granatiere Grecale Nicoloso da Recco	<i>Corvettes</i> . . .	Ape Baionetta Chimera Cormorano Danaide Driade Fenice Flora Folaga Gabbiano
<i>Torpedo Boats</i>	Giuseppe Cesare Abba Aretusa Calliope Giacinto Carini Cassiopea Clio		Gru Ibis Minerva Pellicano Pomona Scimittara Sfinge Sibilla Urania

Together with one corvette to be salvaged, completed or constructed.

MINOR WAR VESSELS

Minesweepers R. D. Nos. 20, 32, 34, 38, 40, 41, 102, 103, 104, 105, 113, 114, 129, 131, 132, 133, 134, 148, 149, together with 16 YMS type acquired from the United States of America.

Vedettes VAS Nos. 201, 204, 211, 218, 222, 224, 233, 235

AUXILIARY NAVAL VESSELS

<i>Fleet Tankers</i>	Nettuno	<i>Tugs (large)</i>	San Pietro
	Lete	(continued)	San Vito
			Ventimiglia
<i>Water Carriers</i>	Arno	<i>Tugs (small)</i>	Argentario
	Frigido		Astico
	Mincio		Cordevole
	Ofanto		Generale Pozzi
	Oristano		Irene
	Pescara		Passero
	Po		Porto Rosso
	Sesia		Porto Vecchio
	Simeto		
<i>Water Carriers</i>	Stura	<i>Tugs (small)</i>	San Bartolomeo
(continued)	Tronto	(continued)	San Benedetto
	Vipacco		Tagliamento
<i>Tugs (large)</i>	Abbazia		N 1
	Asinara		N 4
	Atlante		N 5
	Capraia		N 9
	Chioggia		N 22
	Emilio		N 26
	Gagliardo		N 27
	Gorgona		N 32
	Licosa		N 47
	Lilibeo		N 52
	Linosa		N 53
	Mestre		N 78
	Piombino		N 96
	Porto Empedocle		N 104
	Porto Fossone		RLN 1
	Porto Pisano		RLN 3
	Porto Rose		RLN 9
	Porto Recanati		RLN 10

Training Ship.....Amerigo Vespucci

<i>Transports</i>	Amalia Messina Montegrappa Tarantola
<i>Supply Ship</i>	Giuseppe Miraglia
<i>Repair Ship</i>	Antonio Pacinotti (after conversion from S/M Depot Ship)
<i>Surveying Ships</i>	Azio (after conversion from minelayer) Cherso
<i>Lighthouse-Service Vessel</i>	Buffoluto
<i>Cable Ship</i>	Rampino

B. List of Naval Vessels to be placed at the Disposal of the Governments of the Soviet Union, of the United Kingdom, of the United States of America, and of France

MAJOR WAR VESSELS

<i>Battleships</i>	Giulio Cesare Italia Vittorio Veneto	<i>Destroyers</i>	Augusto Riboty (continued) Velite
<i>Cruisers</i>	Emanuele Filiberto Duca d'Aosta Pompeo Magno Attilio Regolo Eugenio di Savoia Scipione Africano	<i>Torpedo Boats</i> ...	Aliseo Animoso Ardimentoso Ariete Fortunale Indomito
<i>Sloop</i>	Eritrea	<i>Submarines</i>	Alagi Atropo Dandolo Giada Marea Nichelio Platino Vortice
<i>Destroyers</i>	Artigliere Fuciliere Legionario Mitragliere Alfredo Oriani		

MINOR WAR VESSELS

<i>M.T.Bs.</i>	MS Nos. 11, 24, 31, 35, 52, 53, 54, 55, 61, 65, 72, 73, 74, 75. MAS Nos. 433, 434, 510, 514, 516, 519, 520, 521, 523, 538, 540, 543, 545, 547, 562. ME Nos. 38, 40, 41.
<i>Minesweepers</i>	RD Nos. 6, 16, 21, 25, 27, 28, 29.

Gunboat.....Illyria

Vedettes.....VAS Nos. 237, 240, 241, 245, 246, 248.

Landing Craft.....MZ Nos. 713, 717, 722, 726, 728, 729, 737, 744, 758,
776, 778, 780, 781, 784, 800, 831.

AUXILIARY NAVAL VESSELS

Tankers.....Prometeo

Stige

Tarvisio

Urano

Water Carriers..Anapo

Aterno

Basento

Bisagno

Dalmazia

Idria

Isarco

Istria

Liri

Metauro

Polcevera

Sprugola

Timavo

Tirso

Tugs (Large)....Arsachena

Basiluzzo

Capo d'Istria

Carbonara

Cefalu

Ercole

Gaeta

Lampedusa

Lipari

Liscanera

Marechiaro

Mesco

Molara

Nereo

Porto Adriano

Porto Conte

Porto Quietto

Porto Torres

Porto Tricase

Tugs (large)....Procida

(continued)

Promontore

Rapallo

Salvore

San Angelo

San Antioco

San Remo

Talamone

Taormina

Teulada

Tifeo

Vado

Vigoroso

Tugs (small)...Generale Valfre

Licata

Noli

Volosca

N 2

N 3

N 23

N 24

N 28

N 35

N 36

N 37

N 80

N 94

Depot Ship.....Anteo

Training Ship..Cristoforo Colombo

Auxiliary Mine-

Layer.....Fasana

Transports....Giuseppe Messina

Montecuccio

Panigaglia

ANNEX XIII

Definitions

A. NAVAL

(See Article 59)

Standard Displacement

The standard displacement of a surface vessel is the displacement of the vessel, complete, fully manned, engined and equipped ready for sea, including all armament and ammunition, equipment, outfit, provisions and fresh water for crew, miscellaneous stores and implements of every description that are intended to be carried in war, but without fuel or reserve feed water on board.

The standard displacement is expressed in tons of 2,240 lbs. (1,016 Kgs).

War Vessel

A war vessel, whatever its displacement, is:

1. A vessel specifically built or adapted as a fighting unit for naval, amphibious or naval air warfare; or
2. A vessel which has one of the following characteristics:
 - (a) mounts a gun with a calibre exceeding 4.7 inches (120 mm.);
 - (b) mounts more than four guns with a calibre exceeding 3 inches (76 mm.);
 - (c) is designed or fitted to launch torpedoes or to lay mines;
 - (d) is designed or fitted to launch self-propelled or guided missiles;
 - (e) is designed for protection by armour plating exceeding 1 inch (25 mm.) in thickness;
 - (f) is designed or adapted primarily for operating aircraft at sea;
 - (g) mounts more than two aircraft launching apparatus;
 - (h) is designed for a speed greater than twenty knots if fitted with a gun of calibre exceeding 3 inches (76 mm.).

A war vessel belonging to sub-category 1 is no longer to be considered as such after the twentieth year since completion if all weapons are removed.

Battleship

A battleship is a war vessel, other than an aircraft carrier, the standard displacement of which exceeds 10,000 tons or which carries a gun with a calibre exceeding 8 inches (203 mm.).

Aircraft Carrier

An aircraft carrier is a war vessel, whatever her displacement, designed or adapted primarily for the purpose of carrying and operating aircraft.

Submarine

A submarine is a vessel designed to operate below the surface of the sea.

Specialised Types of Assault Craft

1. All types of craft specially designed or adapted for amphibious operations.
2. All types of small craft specially designed or adapted to carry an explosive or incendiary charge for attacks on ships or harbours.

Motor Torpedo Boat

A vessel of a displacement less than 200 tons, capable of a speed of over 25 knots and of operating torpedoes.

B. MILITARY, MILITARY AIR AND NAVAL TRAINING

(See Articles 60, 63 and 65)

1. Military training is defined as: the study of and practice in the use of war material specially designed or adapted for army purposes, and training devices relative thereto; the study and carrying out of all drill or movements which teach or practice evolutions performed by fighting forces in battle; and the organised study of tactics, strategy and staff work.

2. Military air training is defined as: the study of and practice in the use of war material specially designed or adapted for air force purposes, and training devices relative thereto; the study and practice of all specialised evolutions, including formation flying, performed by aircraft in the accomplishment of an air force mission; and the organised study of air tactics, strategy and staff work.

3. Naval training is defined as: the study, administration or practice in the use of warships or naval establishments as well as the study or employment of all apparatus and training devices relative thereto, which are used in the prosecution of naval warfare, except for those which are also normally used for civilian purposes; also the teaching, practice or organised study of naval tactics, strategy and staff work including the execution of all operations and manoeuvres not required in the peaceful employment of ships.

C. DEFINITION AND LIST OF WAR MATERIAL

(See Article 67)

The term "war material" as used in the present Treaty shall include all arms, ammunition and implements specially designed or adapted for use in war as listed below.

The Allied and Associated Powers reserve the right to amend the list periodically by modification or addition in the light of subsequent scientific development.

Category I.

1. Military rifles, carbines, revolvers and pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use.

2. Machine guns, military automatic or autoloading rifles, and machine pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use; machine gun mounts.

3. Guns, howitzers, mortars, cannon special to aircraft, breechless or recoil-less guns and flamethrowers; barrels and other spare parts not readily adaptable for civilian use; carriages and mountings for the foregoing.

4. Rocket projectors; launching and control mechanisms for self-propelling and guided missiles; mountings for same.

5. Self-propelling and guided missiles, projectiles, rockets, fixed ammunition and cartridges, filled or unfilled, for the arms listed in sub-paragraphs 1-4 above and fuses, tubes or contrivances to explode or operate them. Fuses required for civilian use are not included.

6. Grenades, bombs, torpedoes, mines, depth charges and incendiary materials or charges, filled or unfilled; all means for exploding or operating them. Fuses required for civilian use are not included.

7. Bayonets.

Category II.

1. Armoured fighting vehicles; armoured trains, not technically convertible to civilian use.

2. Mechanical and self-propelled carriages for any of the weapons listed in Category I; special type military chassis or bodies other than those enumerated in sub-paragraph 1 above.

3. Armour plate, greater than three inches in thickness, used for protective purposes in warfare.

Category III.

1. Aiming and computing devices, including predictors and plotting apparatus, for fire control; direction of fire instruments; gun sights; bomb sights; fuse setters; equipment for the calibration of guns and fire control instruments.

2. Assault bridging, assault boats and storm boats.

3. Deceptive warfare, dazzle and decoy devices.

4. Personal war equipment of a specialized nature not readily adaptable to civilian use.

Category IV.

1. Warships of all kinds, including converted vessels and craft designed or intended for their attendance or support, which cannot be technically reconverted to civilian use, as well as weapons, armour, ammunition,

aircraft and all other equipment, material, machines and installations not used in peace time on ships other than warships.

2. Landing craft and amphibious vehicles or equipment of any kind; assault boats or devices of any type as well as catapults or other apparatus for launching or throwing aircraft, rockets, propelled weapons or any other missile, instrument or device whether manned or unmanned, guided or uncontrolled.

3. Submersible or semi-submersible ships, craft, weapons, devices, or apparatus of any kind, including specially designed harbour defence booms, except as required by salvage, rescue or other civilian uses, as well as all equipment, accessories, spare parts, experimental or training aids, instruments or installations as may be specially designed for the construction, testing, maintenance or housing of the same.

Category V.

1. Aircraft, assembled or unassembled, both heavier and lighter than air, which are designed or adapted for aerial combat by the use of machine guns, rocket projectors or artillery, or for the carrying and dropping of bombs, or which are equipped with, or which by reason of their design or construction are prepared for, any of the appliances referred to in subparagraph 2 below.

2. Aerial gun mounts and frames, bomb racks, torpedo carriers and bomb release or torpedo release mechanisms; gun turrets and blisters.

3. Equipment specially designed for and used solely by airborne troops.

4. Catapults or launching apparatus for ship-borne, land- or sea-based aircraft; apparatus for launching aircraft weapons.

5. Barrage balloons.

Category VI.

Asphyxiating, lethal, toxic or incapacitating substances intended for war purposes, or manufactured in excess of civilian requirements.

Category VII.

Propellants, explosives, pyrotechnics or liquefied gases destined for the propulsion, explosion, charging or filling of, or for use in connection with, the war material in the present categories, not capable of civilian use or manufactured in excess of civilian requirements.

Category VIII.

Factory and tool equipment specially designed for the production and maintenance of the material enumerated above and not technically convertible to civilian use.

D. DEFINITION OF THE TERMS "DEMILITARISATION"
AND "DEMILITARISED"

(See Articles 11, 14, 49 and Article 3 of Annex VI)

For the purpose of the present Treaty the terms "demilitarisation" and "demilitarised" shall be deemed to prohibit, in the territory and territorial waters concerned, all naval, military and military air installations, fortifications and their armaments; artificial military, naval and air obstacles; the basing or the permanent or temporary stationing of military, naval and military air units; military training in any form; and the production of war material. This does not prohibit internal security personnel restricted in number to meeting tasks of an internal character and equipped with weapons which can be carried and operated by one person, and the necessary military training of such personnel.

ANNEX XIV

Economic and Financial Provisions Relating to Ceded Territories

1. The Successor State shall receive, without payment, Italian State and para-statal property within territory ceded to it under the present Treaty, as well as all relevant archives and documents of an administrative character or historical value concerning the territory in question, or relating to property transferred under this paragraph.

The following are considered as State or para-statal property for the purposes of this Annex: movable and immovable property of the Italian State, of local authorities and of public institutions and publicly owned companies and associations, as well as movable and immovable property formerly belonging to the Fascist Party or its auxiliary organizations.

2. All transfers effected after September 3, 1943, of Italian State and para-statal property as defined in paragraph 1 above shall be deemed null and void. This provision shall not, however, extend to lawful acts relating to current operations of State and para-statal agencies in so far as they concern the sale, within normal limits, of goods ordinarily produced or sold by them in the execution of normal commercial arrangements or in the normal course of governmental administrative activities.

3. Italian submarine cables connecting points in ceded territory, or connecting a point in ceded territory with a point in other territory of the Successor State, shall be deemed to be Italian property in the ceded territory, despite the fact that lengths of these cables may lie outside territorial waters. Italian submarine cables connecting a point in ceded territory with a point outside the jurisdiction of the Successor State shall be deemed to be Italian property in ceded territory so far as concerns the terminal facilities and the lengths of cables lying within territorial waters of the ceded territory.

4. The Italian Government shall transfer to the Successor State all objects of artistic, historical or archaeological value belonging to the cultural heritage of the ceded territory, which, while that territory was under Italian control, were removed therefrom without payment and are held by the Italian Government or by Italian public institutions.

5. The Successor State shall make arrangements for the conversion into its own currency of Italian currency held within the ceded territory by persons continuing to reside in the said territory or by juridical persons continuing to carry on business there. Full proof of the source of the funds to be converted may be required from their holders.

6. The Government of the Successor State shall be exempt from the payment of the Italian public debt, but will assume the obligations of the Italian State towards holders who continue to reside in the ceded territory, or who, being juridical persons, retain their *siège social* or principal place of business there, in so far as these obligations correspond to that portion of this debt which has been issued prior to June 10, 1940, and is attributable to public works and civil administrative services of benefit to the said territory but not attributable directly or indirectly to military purposes.

Full proof of the source of such holdings may be required from the holders.

The Successor State and Italy shall conclude arrangements to determine the portion of the Italian public debt referred to in this paragraph and the methods for giving effect to these provisions.

7. Special arrangements shall be concluded between the Successor State and Italy to govern the conditions under which the obligations of Italian public or private social insurance organizations towards the inhabitants of the ceded territory, and a proportionate part of the reserves accumulated by the said organizations, shall be transferred to similar organizations in the Successor State.

Similar arrangements shall also be concluded between the Successor State and Italy to govern the obligations of public and private social insurance organizations whose *siège social* is in the ceded territory, with regard to policy holders or subscribers residing in Italy.

8. Italy shall continue to be liable for the payment of civil or military pensions earned, as of the coming into force of the present Treaty, for service under the Italian State, municipal or other local government authorities, by persons who under the Treaty acquire the nationality of the Successor State, including pension rights not yet matured. Arrangements shall be concluded between the Successor State and Italy providing for the method by which this liability shall be discharged.

9. The property, rights and interests of Italian nationals permanently resident in the ceded territories at the coming into force of the present Treaty shall, provided they have been lawfully acquired, be respected on a basis of equality with the rights of nationals of the Successor State.

The property, rights and interests within the ceded territories of other Italian nationals and also of Italian juridical persons, provided they have been lawfully acquired, shall be subject only to such legislation as may be enacted from time to time regarding the property of foreign nationals and juridical persons generally.

Such property, rights and interests shall not be subject to retention or liquidation under the provisions of Article 79 of the present Treaty, but shall be restored to their owners freed from any measures of this kind and from any other measure of transfer, compulsory administration or sequestration taken between September 3, 1943, and the coming into force of the present Treaty.

10. Persons who opt for Italian nationality and move to Italy shall be permitted, after the settlement of any debts or taxes due from them in ceded territory, to take with them their movable property and transfer their funds, provided such property and funds were lawfully acquired. No export or import duties will be imposed in connection with the moving of such property. Further, they shall be permitted to sell their movable and immovable property under the same conditions as nationals of the Successor State.

The removal of property to Italy will be effected under conditions and within the limits agreed upon between the Successor State and Italy. The conditions and the time periods of the transfer of the funds, including the proceeds of sales, shall likewise be agreed.

11. The property, rights and interests of former Italian nationals, resident in the ceded territories, who become nationals of another State under the present Treaty, existing in Italy at the coming into force of the Treaty, shall be respected by Italy in the same measure as the property, rights and interests of United Nations nationals generally.

Such persons are authorized to effect the transfer and the liquidation of their property, rights and interests under the same conditions as may be established under paragraph 10 above.

12. Companies incorporated under Italian law and having *siège social* in the ceded territory, which wish to remove *siège social* to Italy, shall likewise be dealt with under the provisions of paragraph 10 above, provided that more than fifty percent of the capital of the company is owned by persons usually resident outside the ceded territory, or by persons who opt for Italian nationality under the present Treaty and who move to Italy, and provided also that the greater part of the activity of the company is carried on outside the ceded territory.

13. Debts owed by persons in Italy to persons in the ceded territory or by persons in the ceded territory to persons in Italy shall not be affected by the cession. Italy and the Successor State undertake to facilitate the settlement of such obligations. As used in this paragraph, the term "persons" includes juridical persons.

14. The property in ceded territory of any of the United Nations and its nationals, if not already freed from Italian measures of sequestration or control and returned to its owner, shall be returned in the condition in which it now exists.

15. The Italian Government recognizes that the Brioni Agreement of August 10, 1942, is null and void. It undertakes to participate with the other signatories of the Rome Agreement of May 29, 1923, in any negotiations having the purpose of introducing its provisions the modifications necessary to ensure the equitable settlement of the annuities which it provides.

16. Italy shall return property unlawfully removed after September 3, 1943, from ceded territory to Italy. Paragraphs 2, 3, 4, 5 and 6 of Article 75 shall govern the application of this obligation except as regards property provided for elsewhere in this Annex.

17. Italy shall return to the Successor State in the shortest possible time any ships in Italian possession which were owned on September 3, 1943, by natural persons resident in ceded territory who acquire the nationality of the Successor State under the present Treaty, or by Italian juridical persons having and retaining *siège social* in ceded territory, except any ships which have been the subject of a bona fide sale.

18. Italy and the Successor States shall conclude agreements providing for a just and equitable apportionment of the property of any existing local authority whose area is divided by any frontier settlement under the present Treaty, and for a continuance to the inhabitants of necessary communal services not specifically covered in other parts of the Treaty.

Similar agreements shall be concluded for a just and equitable allocation of rolling stock and railway equipment and of dock and harbour craft and equipment, as well as for any other outstanding economic matters not covered by this Annex.

19. The provisions of this Annex shall not apply to the former Italian Colonies. The economic and financial provisions to be applied therein will form part of the arrangements for the final disposal of these territories pursuant to Article 23 of the present Treaty.

ANNEX XV

Special Provisions Relating to Certain Kinds of Property

A. INDUSTRIAL, LITERARY AND ARTISTIC PROPERTY

1. (a) A period of one year from the coming into force of the present Treaty shall be accorded to the Allied and Associated Powers and their nationals without extension fees or other penalty of any sort in order to enable them to accomplish all necessary acts for the obtaining or preserving

in Italy of rights in industrial, literary and artistic property which were not capable of accomplishment owing to the existence of a state of war.

(b) Allied and Associated Powers or their nationals who had duly applied in the territory of any Allied or Associated Power for a patent or registration of a utility model not earlier than twelve months before the outbreak of the war with Italy or during the war, or for the registration of an industrial design or model or trade mark not earlier than six months before the outbreak of the war with Italy or during the war, shall be entitled within twelve months after the coming into force of the present Treaty to apply for corresponding rights in Italy, with a right of priority based upon the previous filing of the application in the territory of that Allied or Associated Power.

(c) Each of the Allied and Associated Powers and its nationals shall be accorded a period of one year from the coming into force of the present Treaty during which they may institute proceedings in Italy against those natural or juridical persons who are alleged illegally to have infringed their rights in industrial, literary or artistic property between the date of the outbreak of the war and the coming into force of the present Treaty.

2. A period from the outbreak of the war until a date eighteen months after the coming into force of the present Treaty shall be excluded in determining the time within which a patent must be worked or a design or trade mark used.

3. The period from the outbreak of the war until the coming into force of the present Treaty shall be excluded from the normal term of rights in industrial, literary and artistic property which were in force in Italy at the outbreak of the war or which are recognised or established under part A of this Annex, and belong to any of the Allied and Associated Powers or their nationals. Consequently, the normal duration of such rights shall be deemed to be automatically extended in Italy for a further term corresponding to the period so excluded.

4. The foregoing provisions concerning the rights in Italy of the Allied and Associated Powers and their nationals shall apply equally to the rights in the territories of the Allied and Associated Powers of Italy and its nationals. Nothing, however, in these provisions shall entitle Italy or its nationals to more favourable treatment in the territory of any of the Allied and Associated Powers than is accorded by such Power in like cases to other United Nations or their nationals, nor shall Italy be required thereby to accord to any of the Allied and Associated Powers or its nationals more favourable treatment than Italy or its nationals receive in the territory of such Power in regard to the matters dealt with in the foregoing provisions.

5. Third parties in the territories of any of the Allied and Associated Powers of Italy who, before the coming into force of the present Treaty, had bona fide acquired industrial, literary or artistic property rights con-

flicting with rights restored under part A of this Annex or with rights obtained with the priority provided thereunder, or had bona fide manufactured, published, reproduced, used or sold the subject matter of such rights, shall be permitted, without any liability for infringement, to continue to exercise such rights and to continue or to resume such manufacture, publication, reproduction, use or sale which had been bona fide acquired or commenced. In Italy, such permission shall take the form of a non-exclusive license granted on terms and conditions to be mutually agreed by the parties thereto or, in default of agreement, to be fixed by the Conciliation Commission established under Article 83 of the present Treaty. In the territories of each of the Allied and Associated Powers, however, bona fide third parties shall receive such protection as is accorded under similar circumstances to bona fide third parties whose rights are in conflict with those of the nationals of other Allied and Associated Powers.

6. Nothing in part A of this Annex shall be construed to entitle Italy or its nationals to any patent or utility model rights in the territory of any of the Allied and Associated Powers with respect to inventions, relating to any article listed by name in the definition of war material contained in Annex XIII of the present Treaty, made, or upon which applications were filed, by Italy, or any of its nationals, in Italy or in the territory of any other of the Axis Powers, or in any territory occupied by the Axis forces, during the time when such territory was under the control of the forces or authorities of the Axis Powers.

7. Italy shall likewise extend the benefits of the foregoing provisions of this Annex to United Nations, other than Allied or Associated Powers, whose diplomatic relations with Italy have been broken off during the war and which undertake to extend to Italy the benefits accorded to Italy under the said provisions.

8. Nothing in part A of this Annex shall be understood to conflict with Articles 78, 79 and 81 of the present Treaty.

B. INSURANCE

1. No obstacles, other than any applicable to insurers generally, shall be placed in the way of the resumption by insurers who are United Nations nationals of their former portfolios of business.

2. Should an insurer, who is a national of any of the United Nations, wish to resume his professional activities in Italy, and should the value of the guarantee deposits or reserves required to be held as a condition of carrying on business in Italy be found to have decreased as a result of the loss or depreciation of the securities which constituted such deposits or reserves, the Italian Government undertakes to accept, for a period of eighteen months, such securities as still remain as fulfilling any legal requirements in respect of deposits and reserves.

ANNEX XVI

Contracts, Prescription and Negotiable Instruments

A. CONTRACTS

1. Any contract which required for its execution intercourse between any of the parties thereto having become enemies as defined in part D of this Annex, shall, subject to the exceptions set out in paragraphs 2 and 3 below, be deemed to have been dissolved as from the time when any of the parties thereto became enemies. Such dissolution, however, is without prejudice to the provisions of Article 81 of the present Treaty, nor shall it relieve any party to the contract from the obligation to repay amounts received as advances or as payments on account and in respect of which such party has not rendered performance in return.

2. Notwithstanding the provisions of paragraph 1 above, there shall be excepted from dissolution and, without prejudice to the rights contained in Article 79 of the present Treaty, there shall remain in force such parts of any contract as are severable and did not require for their execution intercourse between any of the parties thereto, having become enemies as defined in part D of this Annex. Where the provisions of any contract are not so severable, the contract shall be deemed to have been dissolved in its entirety. The foregoing shall be subject to the application of domestic laws, orders or regulations made by any of the Allied and Associated Powers having jurisdiction over the contract or over any of the parties thereto and shall be subject to the terms of the contract.

3. Nothing in part A of this Annex shall be deemed to invalidate transactions lawfully carried out in accordance with a contract between enemies if they have been carried out with the authorization of the Government of one of the Allied and Associated Powers.

4. Notwithstanding the foregoing provisions, contracts of insurance and re-insurance shall be subject to separate agreements between the Government of the Allied or Associated Power concerned and the Government of Italy.

B. PERIODS OF PRESCRIPTION

1. All periods of prescription or limitation of right of action or of the right to take conservatory measures in respect of relations affecting persons or property, involving United Nations nationals and Italian nationals who, by reason of the state of war, were unable to take judicial action or to comply with the formalities necessary to safeguard their rights, irrespective of whether these periods commenced before or after the outbreak of war, shall be regarded as having been suspended, for the duration of the war, in Italian territory on the one hand, and on the other hand in the territory of

those United Nations which grant to Italy, on a reciprocal basis, the benefit of the provisions of this paragraph. These periods shall begin to run again on the coming into force of the present Treaty. The provisions of this paragraph shall be applicable in regard to the periods fixed for the presentation of interest or dividend coupons or for the presentation for payment of securities drawn for repayment or repayable on any other ground.

2. Where, on account of failure to perform any act or to comply with any formality during the war, measures of execution have been taken in Italian territory to the prejudice of a national of one of the United Nations, the Italian Government shall restore the rights which have been detrimentally affected. If such restoration is impossible or would be inequitable, the Italian Government shall provide that the United Nations national shall be afforded such relief as may be just and equitable in the circumstances.

C. NEGOTIABLE INSTRUMENTS

1. As between enemies, no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment, or to give notice of non-acceptance or non-payment to drawers or endorsers, or to protest the instrument, nor by reason of failure to complete any formality during the war.

2. Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or endorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment, or protest may be made.

3. If a person has, either before or during the war, incurred obligations under a negotiable instrument in consequence of an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of these obligations, notwithstanding the outbreak of war.

D. SPECIAL PROVISIONS

1. For the purposes of this Annex, natural or juridical persons shall be regarded as enemies from the date when trading between them shall have

become unlawful under laws, orders or regulations to which such persons or the contracts were subject.

2. Having regard to the legal system of the United States of America, the provisions of this Annex shall not apply as between the United States of America and Italy.

ANNEX XVII

Prize Courts and Judgments

A. PRIZE COURTS

Each of the Allied and Associated Powers reserves the right to examine, according to a procedure to be established by it, all decisions and orders of the Italian Prize Courts in cases involving ownership rights of its nationals, and to recommend to the Italian Government that revision shall be undertaken of such of those decisions or orders as may not be in conformity with international law.

The Italian Government undertakes to supply copies of all documents comprising the records of these cases, including the decisions taken and orders issued, and to accept all recommendations made as a result of the examination of the said cases, and to give effect to such recommendations.

B. JUDGMENTS

The Italian Government shall take the necessary measures to enable nationals of any of the United Nations at any time within one year from the coming into force of the present Treaty to submit to the appropriate Italian authorities for review any judgment given by an Italian court between June 10, 1940, and the coming into force of the present Treaty in any proceeding in which the United Nations national was unable to make adequate presentation of his case either as plaintiff or defendant. The Italian Government shall provide that, where the United Nations national has suffered injury by reason of any such judgment, he shall be restored in the position in which he was before the judgment was given or shall be afforded such relief as may be just and equitable in the circumstances. The term "United Nations nationals" includes corporations or associations organised or constituted under the laws of any of the United Nations.

In faith whereof the undersigned Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in the city of Paris in the French, English, Russian and Italian languages this tenth day of February, One Thousand Nine Hundred Forty-Seven.

Here follow the signatures of the Plenipotentiaries of:

Union of Soviet Socialist Republics	Czechoslovakia
United Kingdom of Great Britain and Northern Ireland	Ethiopia
United States of America	Greece
China	India
France	The Netherlands
Australia	New Zealand
Belgium	Poland
Byelorussian Soviet Socialist Re- public	Ukrainian Soviet Socialist Republic
Brazil	Union of South Africa
Canada	People's Federal Republic of Yugo- slavia
	Italy

2. SUPPLEMENTARY DOCUMENTS

a. Protocol on the Establishment of a Four-Power Naval Commission, the Disposal of Excess Units of the Italian Fleet, and the Return by the Soviet Union of Warships on Loan.¹

February 10, 1947

PART I

Whereas the Treaty of Peace with Italy provides that all the excess units of the Italian Fleet, as listed in Annex XII B of the said Treaty, shall be placed at the disposal of the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and of France;

And whereas it is necessary to make provision for the final disposal among certain Allied and Associated Powers of the said excess units;

The Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and of France have therefore agreed as follows:

1. The excess units of the Italian Fleet as listed in Annex XII B of the Treaty of Peace with Italy, and as finally verified on 1st January, 1947, shall be allocated as set out in the Annex of this Protocol. No modification of the list of ships in Annex XII B will be accepted, irrespective of the date of any damage to or loss of such ships, the Italian Government being held responsible for the security and maintenance of such excess units up to the time at which each transfer is completed.

¹ Great Britain, Foreign Office, "Miscellaneous No. 5 (1947)," Cmd. 7078.

2. Upon transfer by the Italian Government, the vessels concerned shall respectively vest in full ownership in the States hereby becoming entitled thereto, subject to the following exceptions:

- (a) The Governments of the Soviet Union and of France take note: that the Governments of the United Kingdom and of the United States of America have undertaken to meet, at least in part, and out of the tonnage at their disposal, the claims of certain other Powers for Italian naval vessels; furthermore, that, in regard to any such Italian naval vessels as the Government of the United States of America may elect to transfer to other Powers, the Government of the United States of America will accept temporary custody only, and, upon transfer of custody by the United States Government to any such Power, full ownership will pass from the Italian Government to that Power.
- (b) None of the Governments concerned shall be obliged to accept any ship assigned to it under this Protocol if such Government deems the ship unsuitable for its purpose, but in that case the Four Powers shall ensure that such ship, unless it is an auxiliary naval vessel, be scrapped or sunk by the Italian Government within nine months from the coming into force of the Treaty.

3. A Commission, to be known as the Four-Power Naval Commission, shall be set up, to meet for the first time immediately after the signature both of the Treaty of Peace with Italy and of this Protocol. This Commission shall make all detailed arrangements necessary to effect the transfer of the excess units of the Italian Fleet, together with their spare parts and armament stores, to the beneficiary Powers, in conformity with the naval clauses of the said Treaty.

4. By invitation of the French Government, the Commission will meet in Paris, where it will operate under the authority of the Council of Foreign Ministers, and carry out all preliminary work practicable prior to the coming into force of the Treaty.

5. Upon the coming into force of the Treaty, the Commission will move to Rome, where it will operate under the authority of the Ambassadors of the Soviet Union, the United Kingdom, the United States of America and of France.

6. All orders and instructions by the Commission shall be issued in the name of the Four Ambassadors, and shall be communicated by them to the Italian Government for execution.

7. The Commission shall have the right to co-opt the services of representatives of Greece, Yugoslavia and Albania, when matters affecting these States are under discussion, and to call for such Italian representation as may be found necessary to the execution of the work of the Commission.

8. The Annex to this Protocol will be published at a later date.*

* ANNEX TO THE PROTOCOL ON THE ESTABLISHMENT OF A FOUR-POWER NAVAL COMMISSION.
THE DISPOSAL OF EXCESS UNITS OF THE ITALIAN FLEET, AND THE RETURN BY
THE SOVIET UNION OF WARSHIPS ON LOAN, PARIS, 10TH FEBRUARY, 1947
ALLOCATION OF UNITS OF THE ITALIAN FLEET SPECIFIED IN ANNEX XII B OF
THE TREATY OF PEACE WITH ITALY

Type	Union of Soviet Socialist Republics	United Kingdom of Great Britain and Northern Ireland	United States of America	France	Greece	Yugoslavia	Albania
Battleships			Italia				
Cruisers	Giulio Cesare Emanuele Filiberto Duca d'Aosta	Vittorio Veneto		Attilio Regolo Pompeo Magno Scipione Africano Eritrea	Eugenio di Savoia		
Sloop							
Destroyers	Artigliere Fuciliere Augusto Riboty			Legionario Mitragliere Alfredo Oriani Velite			
Torpedo Boats	Animoso Ardimentoso Fortunale					Aliseo Ariete Indomito	
Submarines	Mareta Nichelino	Alagi Atropo	Dandolo Platino	Giada Vortice			Illyria
Gunboat							
Motor Torpedo Boats	MS. Nos. 52, 53, 61, 65, 76 MAS. Nos. 516, 519, 520, 521 ME. No. 40	MS. Nos. 72, 73, 74 MAS. Nos. 433, 434, 510, 514 ME. No. 41	MS. Nos. 11, 24, 31 MAS. Nos. 523, 538, 547, 563 ME. No. 38	MS. Nos. 35, 54, 55 MAS. Nos. 540, 543, 546		RD. Nos. 6, 16, 21, 25, 27, 28, 29	
Minesweepers							
Vedettes	VAS. Nos. 245, 246, 248			VAS. Nos. 237, 240, 241			
Landing Craft	MZ. Nos. 778, 780, 781	MZ. Nos. 784, 800, 831	MZ. Nos. 744, 758, 776	MZ. Nos. 722, 726, 728, 729, 737		MZ. Nos. 713, 717	
Tankers	Stige		Prometeo	Tarvisio Urano			
Water Carriers	Baento Istria Liri Polcevera	Metauro Timavo	Dalmazia Idria	Anapo Bisagno Sprugola Tirso	Averno	Learno	
Depot Ship		Anteo					
Training Ship	Cristoforo Colombo						
Auxiliary Minelayer		Fasana					
Transporters	Monteuoco	Giuseppe Messina		Panigaglia		Basilusso Molare Porto Conte San Remo	
Tugs (large)	Capo d'Istria Lampetusa Porto Adriano Rapallo San Angelo Talamone Tifeo Vigoreo	Carbonara Lecanero Mesco Procida Salvora San Anticoio	Arachona Cefalu Gaeta Marechiaro Porto Torres Teulada	Ereole Lipari Nereo Porto Queto Porto Triosse Promontore Taormina Vado			
Tugs (small)	N. Nos. 35, 37, 80, 94	N. Nos. 2, 3, 24	Generale Vastire Noli Voloscs	Licata N. Nos. 23, 28, 36			

PART II

And whereas, by agreement between the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, certain warships of the Royal Navy and of the United States Navy were, in 1944, transferred on loan to the Government of the Soviet Union;

And whereas it is necessary to make provision for the return to the Governments of the United Kingdom and of the United States of America of the aforementioned warships now on loan;

The Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America have further agreed as follows:

9. The representatives of the above-mentioned three Governments on the Commission shall coördinate the arrangements for the return to the Governments of the United States of America and of the United Kingdom of the vessels on loan to the Government of the Soviet Union, as listed in paragraph 10 below. The return of such vessels to United Kingdom and United States ports shall, as far as possible, be effected simultaneously with the transfer to the Soviet Union of the excess units of the Italian Fleet allocated to her.

10. List of Vessels on Loan from the United Kingdom

	British Name	Temporary Russian Name
Battleship	Royal Sovereign	Archangelsk
Destroyers	St. Albans	Dostoiny
	Brighton	Zharky
	Richmond	Zhyvuchy
	Chelsea	Derzky
	Leamington	Zhguchy
	Roxburgh	Doblestny
	Georgetown	Zhostky
Submarines	Unbroken	B.2
	Unison	B.3
	Ursula	B.4

Vessel on Loan from the United States

	United States Name	Temporary Russian Name
Cruiser	Milwaukee	Murmansk

In faith whereof the Undersigned Plenipotentiaries have signed the present Protocol, which will take effect immediately, the English, French and Russian texts being equally authentic.

Done in Paris this 10th day of February, 1947.

For the Government of the Union of Soviet Socialist Republics:

(L.S.)

A. BOGOMOLOV

For the Government of the United Kingdom of Great Britain and Northern Ireland:

(L.S.)

DUFF COOPER

For the Government of the United States of America:

(L.S.)

JEFFERSON CAFFERY

For the Government of France:

(L.S.)

BIDAULT

*b₁. Memorandum of Understanding Between the Governments of France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America on the One Hand, and the Government of Italy on the Other Hand, Regarding German Assets in Italy **

August 14, 1947

With reference to Article 77, paragraph 5, of the Treaty of Peace with Italy, the Government of Italy on the one hand and the Governments of France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America on the other hand have entered into the following understanding, including the Annexes attached hereto and made a part of this Memorandum of Understanding, with respect to German assets of whatsoever nature in Italy:

1. The Government of Italy will take appropriate measures to ascertain what German assets in Italy are not presently under administration.

2. The Government of Italy will take all necessary measures to effect the prompt sale or liquidation of all assets in Italy belonging directly or indirectly to (a) German individuals in Germany or corporations or other organizations organized under the laws of Germany; (b) the German state and German municipalities and state, federal, municipal, or other governmental authorities; (c) German Nazi organizations; and (d) German individuals already repatriated or to be repatriated to Germany. Exceptions to these categories should be made in the case of (a) assets of individuals deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation; (b) assets belonging to religious bodies or private charitable institutions and used exclusively for religious or charitable purposes; (c) assets of a corporation or any other organization organized under the laws of Germany to the extent that they are not beneficially German-owned; (d) assets released under an intercustodial agreement with another government; and (e) assets coming within the jurisdiction of Italy as a result of resumption of trade with Germany. The term "Germany" shall be defined as the Germany within the boundaries of that country as of De-

* *Department of State Bulletin*, Vol. XVII, No. 425, p. 388.

cember 31, 1937. Action with respect to German-owned trademarks and patents shall be held in abeyance pending separate representations.

3. The Government of Italy will dispose of German assets only to non-German nationals and with maximum safeguards to insure against their eventual return to German ownership or control.

4. The Government of Italy will credit the proceeds of liquidation of the assets to a special account to be held for such disposition as may subsequently be determined in accordance with Article 77, paragraph 5, of the Treaty of Peace with Italy.

5. The Government of Italy will execute the foregoing in collaboration with the Governments of France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. To insure such collaboration, there will be established a Committee composed of one representative of each of the four Governments, which will meet at or near the seat of the Government of Italy. Chairmanship of this Committee will be rotated among the members in an order determined by the Committee. This Committee will operate by majority vote, establish its own rules of procedure, and take all action necessary to carry out the following functions:

A. To instruct the Agency of the Government of Italy charged with administering the program for control and liquidation of German assets in Italy as to policies and procedures to be followed in such program; such instruction to include, but not by way of limitation:

(1) Direction in the techniques and procedures for obtaining a census of all German assets in Italy;

(2) Direction that investigations be made in particular cases by the Agency with a view to uncovering hidden or cloaked German assets in Italy. In conjunction therewith the Committee shall place at the disposal of the agency all available information and documentary evidence likely to facilitate the accomplishment of its task;

B. To review in advance of consummation all sales of German assets to insure that the proposed sales are in accord with the national interests of the four Governments, taking into account the objectives of precluding the return of German external assets to German ownership or control and of favoring freedom of trade.

6. The Committee may determine that the expenses, or any part of them, incurred by it, except the expenses of the respective representatives on the Committee, shall be a charge on the proceeds of such assets.

7. The Agency will keep the Committee fully informed of the Agency's activities. It will furnish to the Committee all information requested concerning the census and status of German assets, and in particular it will seek the instructions of the Committee before making any decisions materially affecting the status of German assets under its administration.

8. The Agency will formulate the terms and conditions of sale or other disposition of German property, subject to review by the Committee.

9. This Memorandum of Understanding shall enter into force upon the day it is signed.

Done at Washington in quadruplicate in English, French and Italian languages, each of which shall have equal validity, this 14th day of August, 1947.

For the Government of France:

FRANCOIS LACOSTE

For the Government of the United Kingdom of Great Britain and Northern Ireland:

J. H. MAGOWAN

For the Government of the United States of America:

ROBERT A. LOVETT

For the Government of Italy:

IVAN MATTEO LOMBARDO

Annex 1

For the purposes of this understanding the term "asset" as used herein refers, but not by way of limitation, to any real property or interest therein, enterprise (commercial, industrial, financial, or scientific), security or interest therein, corporate and contractual licenses and arrangements, insurance policies and reinsurance contracts, bank accounts and deposits, including trusteeship accounts, safe deposit boxes, vaults, checks, drafts, credits, gold and other precious metals, options and any other types of arrangements and undertakings, written or unwritten.

Annex 2

Any dispute concerning the interpretation or execution of this understanding, which is not settled by direct diplomatic negotiations, shall be referred to a body composed of one representative each of the Governments of France, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

*b₂. Memorandum of Understanding Between the Government of the United States of America and the Government of Italy Regarding Settlement of Certain Wartime Claims and Related Matters **

August 14, 1947

As an integral part of the measures which are now being taken to restore normal financial and economic relations between our countries, and as a step toward the economic stability of Italy, the Government of the United States of America and the Government of Italy have reached an understanding providing for mutual renunciation of claims and for related agreements, as follows:

Article I

Renunciation of Claims by Italy or Italian Nationals

1. (a) In reaffirmation of and connection with Article 76 of the Treaty of Peace with Italy, dated at Paris February 10, 1947, the Government of Italy waives all claims of Italy of any description, arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, against United States nationals or the Government of the United States of America, any of its agencies, or contractors or sub-contractors of, or licensees from the Government of the United States of America or its agencies.

(b) The Government of Italy further discharges and agrees to save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any such claims of Italian nationals.

2. (a) The Government of Italy waives any claims of Italy against the Government of the United States of America, its agencies or United States nationals arising out of actions with respect to ships under Italian registry and flag, including ships in which there is an Italian interest, between September 1, 1939 and the coming into force of the present Memorandum of Understanding, including claims with respect to the use of Italian ships for civilian or other passenger carriage.

(b) The Government of Italy further discharges and agrees to save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any such claims of Italian nationals.

3. The Government of Italy waives any claims of Italy against the Government of the United States of America, its officers or agencies arising out of the maintenance of camps in Italy for displaced persons and for all costs incurred in caring for displaced persons in Italy, including but not limited

* *Department of State Bulletin*, Vol. XVII, No. 425, p. 372.

to claims for reimbursement of the United States share of lira funds advanced to the Allied Financial Agency for the purposes specified in this paragraph.

4. (a) The Government of Italy discharges and agrees to save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any claims:

- (i) of Italian nationals, whether or not asserted in the courts of any country, respecting which the ultimate liability is that of the Government of the United States of America, and arising out of maritime incidents, occurring between September 1, 1939 and the coming into force of the present Memorandum of Understanding, excluding incidents involving ships engaged in purely commercial activities; or
- (ii) of Italian nationals or persons domiciled or resident in Italy against the Government of the United States of America, its contractors and sub-contractors, or licensees therefrom, for royalties ultimately paid or payable by the United States of America, or for use of inventions, patented or unpatented, or for infringement of patent rights, arising out of any use of patents or inventions by the Government of the United States of America or such contractors, sub-contractors or licensees, in connection with the wartime activities of the United States of America or programs connected therewith.

(b) The Government of Italy further waives any such claims of Italy.

5. (a) The Government of Italy discharges and agrees to save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any claims of Italian nationals, or non-Italian nationals, residing in or transiting Italy, whether or not asserted in the courts of any country, respecting which the ultimate liability is that of the Government of the United States of America and arising out of acts or omission, both line of duty and non-line of duty, of military and civilian employees of the armed forces of the United States of America, occurring between September 1, 1939 and the coming into force of the present Memorandum of Understanding.

(b) The Government of Italy further waives any such claims of Italy.

(c) The Government of Italy further agrees to process and to assume full responsibility for the settlement and discharge of any such claims.

6. (a) The Government of Italy discharges and agrees to save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any claims of Italian nationals against the Government of the United States of America, its agencies, or persons acting under its direction, arising out of the seizure and disclosure of technology, whether patented or not, under programs of the Government of the United States of America for the acquisition and

disclosure of such technology in connection with wartime operations and any claim against any person based upon use of information so disclosed.

(b) The Government of Italy further waives any such claims of Italy.

7. (a) The obligation to return Italian goods under Article 73(2) of the Treaty of Peace is understood to be an obligation only to return such goods in the condition in which they exist at the time of return.

(b) (i) Except as specified in Article 73(2) of the Treaty of Peace, no claim shall be asserted by Italy against the Government of the United States of America or its agencies, or against duly authorized United States nationals, arising out of or in connection with procurement or requisition of supplies, services or facilities in Italy by the military forces or civil agencies of the United States of America prior to the effective date of the said Treaty.

(ii) The Government of Italy further agrees to process and to assume full responsibility for settlement and discharge of any such claims of Italian nationals.

8. With respect to any of the waivers included in the present Article, the Government of Italy reaffirms its obligations to make equitable compensation in lira to the extent set out by the terms of Article 76(2) of the Treaty of Peace.

Article II

Renunciation of Claims by the Government of the United States of America

9. The Government of the United States of America, recognizing the contribution of Italy towards the winning of the war by Italian action since October 13, 1943, and recognizing the conditions and terms of the Treaty of Peace with Italy and of various clauses of this financial agreement, agrees to renounce and waive claims of the Government of the United States of America or its agencies arising out of the following connections:

(a) Civilian supplies furnished, prior to the effective date of this Memorandum of Understanding, under the military relief program;

(b) Dollars transferred or to be transferred to Italy, equivalent to the net lira expenditures of the United States armed forces in Italy; and

(c) Supplies procured with funds appropriated for the purposes of the Lend-Lease Act and transferred to Italy through the agency of the United States Department of War.

10. The Government of the United States of America waives such claims as it may have for the payment of salary to Italian officer prisoners of war, made consistent with the convention relating to the treatment of prisoners of war, signed at Geneva on July 27, 1929.

11. (a) The Government of the United States of America agrees to continue to honor in lira, at the prevailing rate of exchange applicable to the Government of the United States of America expenditures in Italy at the time of payment, and in accordance with procedures established by the United States military authorities, all valid evidences of obligations made out by the Government of the United States of America or its agencies and in its name or the name of any of its agencies to former Italian prisoners of war and surrendered Italian personnel, both officer and enlisted, it being understood that the two Governments may enter into a subsequent understanding with reference to the procedures which may be utilized by the Government of the United States of America to meet these obligations.

(b) The Government of Italy further agrees to undertake that all payments which have been made by it to former Italian prisoners of war and surrendered personnel prior to the effective date of this agreement in lira at less than the prevailing rate of exchange applicable to the Government of the United States of America expenditures in Italy at the time of payment, shall be adjusted to such then prevailing rate of exchange.

12. The Government of the United States of America waives all costs, including maintenance costs, incurred in the repatriation of Italian prisoners of war to the assembly point on Italian territory. For the purposes of this Memorandum of Understanding the assembly point on Italian territory shall be considered the first point of arrival of Italian prisoners of war on Italian territory.

13. The Government of the United States of America waives any claims it or its agencies or officers may have with respect to advances made by it toward the financing of Italian Partisans. The Government of the United States of America, in further recognition of the renunciation of claims by the Government of Italy, and with particular reference to paragraph 2 (a) above, waives all claims it may have against the Government of Italy resulting from advances made by it toward the maintenance of Italian diplomatic missions, and also Italian shipping and crews in neutral ports.

14. (a) The Government of the United States of America waives any claims it or its agencies or officers may have with respect to any transfer made directly by the armed forces of the United States of America, their agencies, or officers of supplies and materials from military stocks to the Government of Italy, to the Italian armed forces or their agencies or officers.

(b) The Government of the United States of America, with reference to 14 (a) above, reserves the right of recapture of any arms, ammunition and implements of war (of the types listed in Proclamation No. 2717 of the President of the United States of America, dated February 14, 1947), which may have been transferred by the armed forces of the United States of America, its agencies or officers, and are held by the Government of Italy, its agencies or officers, on the date on which notice requesting return is communicated to the Government of Italy, but the Government of the United

States of America has indicated that it does not intend to exercise generally its right of recapture of such articles. Disposal of such articles by the Government of Italy in or for use in other countries will be made only with the consent of the Government of the United States of America and with payment to the Government of the United States of America of any proceeds of such disposals. The Government of Italy agrees that all such articles held by it will be used only for purposes compatible with the principles of international security and welfare set forth in the Charter of the United Nations.

15. Nothing contained herein shall be construed to affect in any manner obligations assumed by Italy or the United States of America pursuant to settlements between Italy and the United States of America involving disposal of surplus property.

Article III

Property of Nationals of the United States of America

16. (a) The Government of Italy will expedite in any manner necessary arrangements now being undertaken, or those necessary to be undertaken, for the desequstration of and release of any unusual controls over the property or interests in property in Italy of nationals of the United States of America, including the cancellations of any controls, contracts, including contracts for the sale of capital assets or a part thereof, agreements or arrangements undertaken during the period of control in accordance with the request, or at the direction of the Government of Italy, its agencies or officials, which are not deemed to have been in the best interest of such property or interests. The Government of Italy further agrees that with respect to the application of Paragraph 4(a) and 4(d) of Article 78 of the Treaty of Peace to cases which fall within the terms of this provision, as well as to all cases to which Paragraph 4(a) and 4(d) of Article 78 apply, the requirement "for the restoration to complete good order" shall be followed in all cases where there has been (1) deterioration of the physical property while under Italian control, and (2) where the physical property has suffered non-substantial damage as a result of acts of war. In all other cases the requirement to compensate in lira to the extent of "two-thirds of the sum necessary" shall apply, provided that the Government of Italy may, with respect to any case, apply the requirement "for the restoration to complete good order."

(b) The Government of Italy agrees that with respect to the property or interests in property of United States nationals which property or interests are not covered by section (a) above, it will accord such property or interests treatment identical with that provided in section (a) above.

(c) The Government of Italy shall, with reference to paragraphs (a) and (b) above, apply Paragraph 4(b) of Article 78 of the Treaty of Peace.

(d) Compensation paid in accordance with terms of this section shall be free of levies, taxes, or other charges and shall be freely usable in Italy but shall be subject to the foreign exchange control regulations which may be in force in Italy from time to time.

Article IV

Prewar Claims of the Government of the United States of America or of United States Nationals

17. (a) The Government of Italy, recognizing the existence of legitimate claims of the Government of the United States of America or of United States nationals against the Government of Italy or Italian nationals arising out of contracts or other obligations incurred prior to December 8, 1941, agrees that it will make every effort to settle at an [sic] early a date as possible, and to facilitate to the extent possible the payment of the debts or other claims referred to hereinabove.

(b) With respect to lira payments made under Italian law to Italian government agencies in purported discharge of debts in non-lira currencies owed by Italian nationals to nationals of the United States of America, the Government of Italy fully recognizes the existence of legitimate claims of the Government of the United States of America or United States nationals in these cases. The Government of Italy further agrees that within six months from the date of the signing of this Memorandum of Understanding it will either assume the obligation to make payment of such debts in foreign exchange to the extent that lira payments were made to the Government of Italy in the manner referred to above, or it will provide that the Italian debtor shall be held directly responsible for the payment of such debts. In either event, the Government of Italy agrees that it will make available the foreign exchange necessary for the discharge of such debts at the earliest date permitted by the Italian foreign exchange position. It is understood that the provisions of this section do not prejudice any settlement between the Government of Italy and the Italian debtors with respect to such lira payments.

Article V

Definitions

18. For the purposes of this Memorandum of Understanding, the term "nationals" means individuals who are nationals of the United States of America, or of Italy, or corporations or associations organized under the laws of the United States of America or Italy, at the time of the coming into force of this Memorandum of Understanding, provided, that under Article III above, nationals of the United States of America shall, for purposes of receiving compensation, also have held this status either at the time at

which their property was damaged or on September 3, 1943, the date of the Armistice with Italy.

Article VI

Clauses of the Treaty of Peace

19. It is agreed that any of the clauses of the Treaty of Peace, dated at Paris February 10, 1947, to which this Memorandum of Understanding may refer, shall be considered as constituting an integral part of this Memorandum of Understanding, as between the Governments of the United States of America and Italy.

Article VII

Effective Date

20. This Memorandum of Understanding shall enter into force upon the day it is signed.

Done at Washington in duplicate, in the English and Italian languages, both of which shall have equal validity, this 14th day of August, 1947.

For the Government of the United States of America:

ROBERT A. LOVETT

For the Government of Italy:

LOMBARDO

b₃. *Memorandum of Understanding Between the Government of the United States of America and the Government of Italy Regarding Italian Assets in the United States of America and Certain Claims of United States Nationals **

August 14, 1947

Discussions have taken place with representatives of the Government of Italy on the question of disposition of Italian property in the United States of America. These discussions have grown out of the terms of the Treaty of Peace with Italy dated at Paris February 10, 1947, particularly Article 79 thereof; and out of the financial and other relations between the United States of America and Italy during the period since the Italian Armistice. As a further step toward the bettering of relations between Italy and the United States of America, the Government of the United States of America has felt it desirable, subject to appropriate governmental action, to renounce certain of the rights granted to it under the terms of the Treaty of Peace, and to return and unblock property in the United States of America which has been vested or blocked by the Government of the United States

* Same, p. 375.

of America by reason of an interest of Italy or Italian nationals. The Government of Italy, on the other hand, has recognized that in justice it should provide funds to be utilized by the Government of the United States of America in application to claims of United States nationals arising out of the war with Italy.

The Government of the United States of America and the Government of Italy have therefore, reached an understanding as follows:

Article I

1. The Government of the United States of America, referring to Article 79 of the Treaty of Peace with Italy, dated at Paris February 10, 1947, nevertheless agrees, within the limits provided by law:

(a) to take the necessary steps to effect the return of property and interests vested in or transferred to any officer or agency of the Government of the United States of America under the Trading with the Enemy Act as amended, which were owned by the Government of Italy or Italian nationals immediately prior to such vesting or transfer, or the net proceeds of such property or interest; provided, however, that such return shall be subject to the conditions and exceptions set forth in Annex I, which constitutes an integral part of this Memorandum of Understanding;

(b) to take the necessary steps to effect the release by the United States authorities of blocked property and interests in the United States of America of Italy or Italian nationals. Such release shall be effected in accordance with conditions stated in a letter of assurances, dated today, and addressed by the Italian authorities to the Secretary of the Treasury of the United States of America, it being understood that the unblocking procedure will actually be put into effect not later than one month from the date of this Memorandum of Understanding;

(c) to take the necessary steps to return, in their condition at the time of return, to the Government of Italy all vessels which were under Italian registry and flag on September 1, 1939, which were thereafter acquired by the Government of the United States of America either by purchase or by forfeiture and which are now owned by the Government of the United States of America; provided, that in the event forfeiture proceedings against any of the vessels are dismissed, the Government of Italy agrees to discharge and save harmless the Government of the United States of America from any responsibility and liability for the processing, settlement and satisfaction of any claims against such vessels; and

(d) to take the necessary steps, subject to all terms and conditions of authorizing legislation, to transfer to the Government of Italy surplus liberty ships of the Government of the United States of America, to be operated by Italy for commercial uses, of a total tonnage approximately equal to the total tonnage of vessels which were under Italian registry and

flag on September 1, 1939, and were subsequently seized in United States ports and thereafter lost while being employed in the United States war effort, provided that the selection of such surplus ships shall be by the Government of the United States of America, after consultation with the Government of Italy, and provided further that the ships shall be transferred on an as is where is basis.

2. The release or return of property and interests under the present Article shall not prevent the assertion of rights or claims to, against or with respect to such property and interests or the proceeds thereof; nor (in accordance with Article 76 of the Treaty of Peace signed at Paris) shall this Memorandum of Understanding or its execution in any way give rise to any cause of action or claim against the Government of the United States of America, or any officer or agency thereof.

3. (a) The provisions of this Article shall in no manner impose any obligation upon the Government of the United States of America to return any royalty or other compensation or right to receive a royalty or other compensation to the Government of Italy or any Italian national arising out of the use prior to December 31, 1945, of any invention, patent or patent right in the United States held by the Government of Italy or Italian nationals, or subject to return to the Government of Italy or Italian nationals pursuant to this Memorandum of Understanding.

(b) The Government of Italy recognizes that the Government of the United States of America, its agencies or United States nationals, have no responsibility for the processing, settlement or satisfaction of any claims of Italian nationals falling under the terms of this paragraph and agrees, consistent with Paragraph 3 of Article 79 of the Treaty of Peace, to compensate Italian nationals for any duly established claims falling under the terms of this Article.

(c) Except as set forth in this Memorandum of Understanding or in Annex I hereto, industrial property released or returned by the Government of the United States of America pursuant to Paragraph 1 of the present Article shall be subject only to such restrictions as may otherwise be generally applicable to industrial property in the United States of America held by foreign countries or nationals of such countries.

Article II

4. The Government of Italy agrees to pay and deposit with the Government of the United States of America on or before December 31, 1947 the sum of \$5,000,000 (five million dollars) in currency of the United States of America, this sum to be utilized, in such manner as the Government of the United States of America may deem appropriate, in application to the claims of United States nationals arising out of the war with Italy and not otherwise provided for.

Article III

Definitions

5. For the purposes of this Memorandum of Understanding, the term "Italian nationals" means individuals who are nationals of Italy or corporations or associations organized under the laws of Italy, at the time of the coming into force of this Memorandum of Understanding.

Article IV

Clauses of the Treaty of Peace

6. It is agreed that any of the clauses of the Treaty of Peace, dated at Paris February 10, 1947, to which this Memorandum of Understanding and the Annex hereto may refer, shall be considered as constituting an integral part of this Memorandum of Understanding and the Annex hereto, as between the Governments of the United States of America and Italy.

Article V

Effective Date

7. This Memorandum of Understanding shall enter into force upon the day it is signed.

Done at Washington in duplicate, in the English and Italian languages, both of which shall have equal validity, this 14th day of August, 1947.

For the Government of the United States of America:

ROBERT A. LOVETT

For the Government of Italy:

LOMBARDO

Annex I

The Government of the United States of America intends to effect returns, pursuant to Article I, paragraph 1(a) of this Memorandum of Understanding, by appropriate legislation permitting returns of vested property to the Government of Italy and subjects or citizens of Italy and corporations or associations organized under the laws of Italy upon the terms and conditions generally applicable to return of such property to others eligible for return pursuant to Section 32 of the Trading with the Enemy Act, as amended.

It is understood that while the Government of the United States of America will seek to eliminate Italian nationality as a disqualification from eligibility for return pursuant to Section 32(a) of the Trading with the Enemy Act, as amended,

(a) The Government of the United States of America does not intend to assume any obligation to make returns to any of the following:

(1) The Italian Fascist Party, any organization closely affiliated therewith (other than the Government of Italy) or any person who was a member of such party or organization at any time after September 8, 1943; or

(2) Any person, firm or organization convicted of violation of any of the statutes set forth in Section 34 (a) of the Trading with the Enemy Act, as amended; or

(3) Any person, firm or organization convicted of war crimes or of having collaborated with an enemy country after September 8, 1943; or

(4) Any person, firm or organization indicted or officially charged with war crimes or with having collaborated with an enemy country after September 8, 1943, until such person, firm or organization has been officially acquitted or cleared of such indictment or charge; or

(5) A corporation or association organized under the laws of any country other than Italy or Trieste; or

(6) Any individual who was at any time after December 7, 1941, a citizen or subject of a nation other than Italy with which the United States of America has at any time since December 7, 1941, been at war; or

(7) Any individual voluntarily resident at any time since December 7, 1941, within the territory of any nation other than Italy with which the United States of America has at any time since December 7, 1941, been at war;

(b) Ultimate disposition of property falling under the terms of section (a), paragraphs (1)-(7) above is reserved for future decision by the Government of the United States of America, after consultation between the Governments of Italy and the United States of America;

(c) The Government of the United States of America does not intend to make returns in any case in which it deems that return would be contrary to its interests in respect of national security or antitrust or fiscal policy; and

(d) The Government of the United States of America does not intend to assume any obligation to make returns of any property which was used pursuant to an arrangement to cloak or to conceal any property or interest within the United States of America of any person ineligible to receive a return under Section 32(a) (2) of the Trading with the Enemy Act, as amended.

It is further understood that in the case of any literary, artistic or industrial property to be returned, the property shall remain subject to all licenses and agreements for licenses which were granted or entered into by the United States of America with respect to it and which were in effect immediately prior to return; and any rights of the Government of the United States of America to revoke any such license or agreement for license shall not be included within the return.

SUPPLEMENTARY NOTES RELATING TO UNDERSTANDINGS

August 14, 1947

SIR: With reference to the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding settlement of certain wartime claims and related matters," I have the honor to inform you of my Government's undertakings as set forth below with respect to the assistance to be given to nationals of the United States of America with respect to their properties in Italy. This assistance is directed particularly to the implementation of Article 78 of the Treaty of Peace with Italy and to Article III, paragraph 16, of the above Memorandum of Understanding.

The Government of Italy shall, as soon as possible, designate an Italian governmental agency having authority to receive and determine claims of nationals of the United States of America with respect to their properties in Italy, and to effect the restoration of such properties, or pay compensation, or both, as provided in Article 78 of the Treaty of Peace with Italy, and in accordance with the terms of Article III, paragraph 16, of the Memorandum of Understanding.

With a view to rendering appropriate assistance to nationals of the United States of America, having claims falling within the scope of this agreement, and also to any representative who may be designated by the Government of the United States of America to assist such nationals in the preparation and establishment of their claims the Government of Italy further will, upon request and without charge, furnish copies of pertinent evidence and records in Italy, and will also, upon request and without charge make available to the designated representative of the United States of America funds in lira to the extent necessary to defray the local expenses in Italy, including subsistence, of such representative and his assistants, and also to pay compensation to Italian personnel designated in Italy by such representative, is being understood that such expenses will be kept to a minimum.

Accept [etc.]

LOMBARDO
*Chief of the Italian Economic
and Financial Delegation*

The Honorable
ROBERT A. LOVETT,
Acting Secretary of State.

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date in the following terms:

[Here is repeated text of preceding letter.]

I am pleased to inform you that the undertakings and procedures set forth in your note are satisfactory to my Government. These procedures can be expected to limit the expenses to be incurred under section 5 of Article 78 of the Treaty of Peace, which is a desirable result for both Governments.

Accept [etc.]

ROBERT A. LOVETT
Acting Secretary of State

The Honorable
IVAN MATTEO LOMBARDO,
*Chief of the Italian Economic
and Financial Delegation.*

August 14, 1947

SIR: Reference is made to the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding certain assets in the United States of America and certain claims of United States nationals," signed this date.

In connection with the return to Italy and Italian nationals of property vested in the Office of Alien Property of the Department of Justice of the United States of America, I take this opportunity to inform you that the Government of Italy has designated the Italian Ministry of Treasury as its agency to certify claims for the return of such property.

LOMBARDO
*Chief of the Italian Economic
and Financial Delegation*

The Honorable
ROBERT A. LOVETT,
Acting Secretary of State.

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date in the following terms:

[Here is repeated text of preceding letter.]

I will immediately bring your note to the attention of the Office of Alien Property, Department of Justice, which will communicate directly with the Italian Ministry of Treasury concerning the implementation of the certification agreement.

ROBERT A. LOVETT
Acting Secretary of State

The Honorable

IVAN MATTEO LOMBARDO,

*Chief of the Italian Economic
and Financial Delegation.*

August 14, 1947

SIR: With respect to the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding settlement of certain wartime claims and related matters," I am authorized, on behalf of the Government of Italy, to make known to you the intentions of the Government of Italy with respect to United States military cemeteries in Italy.

The Government of Italy is deeply aware of the fact that the existence of these cemeteries is the result of the valiant and heroic sacrifices made by nationals of the United States of America in the cause of peace and justice for my country, as well as for their country. My Government is also deeply aware of the fact that for years to come the members of the families and relatives of those United States nationals who are buried in United States military cemeteries in Italy will wish to visit their graves. The Government of Italy, therefore, in recognition of the circumstances which led to the establishment of these cemeteries and in full appreciation of their symbolic significance, offers to undertake to maintain in good order and in perpetuum all United States military cemeteries in Italy.

Accept [etc.]

LOMBARDO

*Chief of the Italian Economic
and Financial Delegation*

The Honorable

ROBERT A. LOVETT,

Acting Secretary of State.

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date in the following terms:

[Here is repeated text of preceding letter.]

The Government of the United States of America not only values the offer of the Government of Italy to maintain in good order and in perpetuum all United States military cemeteries in Italy, but also the motives which prompted that offer.

It is, therefore, with a deep sense of appreciation that I accept, on behalf of my Government, the offer of the Government of Italy to undertake to maintain in good order and in perpetuum all United States military cemeteries in Italy.

Accept [etc.]

ROBERT A. LOVETT

Acting Secretary of State

The Honorable

IVAN MATTEO LOMBARDO,

*Chief of the Italian Economic
and Financial Delegation.*

August 14, 1947

SIR: In connection with the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States nationals," signed this date, I wish to bring to your attention the question of the exclusion of Italy from the benefits of the Boykin Act, Public Law 690, 1946, 79th Congress.

Section XIV of this Act specifically excludes from its benefits the citizens of any country with which the United States of America has been at war. In this connection, I wish to refer to the terms of Annex XV of the Italian Treaty of Peace relating to Industrial, Literary and Artistic Property. My Government believes that it would be consistent with the spirit of Annex XV for the Government of the United States of America to amend the Boykin Act so as to authorize the granting of reciprocal rights by the United States of America to Italy and Italian nationals.

I am pleased to be in a position to advise you that at the present time Italy grants to the United States of America and its nationals the rights and privileges referred to in Annex XV. In this connection reference is made to Article I of the Italian Law of September 5, 1946, No. 123, which grants to United States nationals rights with respect to their patents in Italy which are denied to Italian nationals with respect to their patents in the United States of America.

In view of the above circumstances, I should appreciate it if you would advise me of the policy and intentions of the Government of the United States of America in this matter.

Accept [etc.]

LOMBARDO

*Chief of the Italian Economic
and Financial Delegation*

The Honorable

ROBERT A. LOVETT,

Acting Secretary of State.

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date in the following terms:

[Here is repeated text of preceding letter.]

I am pleased to be able to inform you that Public Law 380, a copy of which is attached hereto, which was recently enacted by the Congress,

amends the Boykin Act by removing present restrictions against the enjoyment by Italy and Italian nationals of the rights granted by the Act, on a finding by the Commission on Patents that Italy grants such rights to the United States of America and its nationals.

It is noted that in your note you state that the Government of Italy grants substantially such rights to the United States of America and its nationals.

Accept [etc.]

ROBERT A. LOVETT
Acting Secretary of State

The Honorable

IVAN MATTEO LOMBARDO,
*Chief of the Italian Economic
and Financial Delegation.*

Enclosure

(PUBLIC LAW 380—80TH CONGRESS)

(CHAPTER 511—1ST SESSION)

(H.R. 4070)

AN ACT

To carry into effect certain parts relating to patents of the treaties of peace with Italy, Bulgaria, Hungary, and Rumania, ratified by the Senate on June 5, 1947, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the International Convention for the Protection of Industrial Property of 1883, as amended, is considered as reestablished and in full force and effect between the United States and Italy, Bulgaria, Hungary, and Rumania from the date of this Act and the nationals of the latter countries may hereafter apply for and obtain patents in the United States for their inventions and enjoy the rights and privileges thereof as provided in article 2 of said convention: *Provided, however,* That patents shall not be applied for or obtained, or if obtained, shall not be valid, for inventions heretofore made relating to war material as specified in article 6 of annex XV A of the Treaty of Peace with Italy, article 6 of annex IV of the Treaty of Peace with Bulgaria, Article 6 of annex IV A of the Treaty of Peace with Hungary, and Article 6 of annex IV A of the Treaty of Peace with Rumania.

SEC. 2. The rights of priority and the times for the taking of any action specified in sections 1 and 3 of Public Law 690, Seventy-ninth Congress, approved August 8, 1946, which had not expired on December 8, 1941, or which commenced after such date, shall be and are hereby extended until February 29, 1948, in favor of nationals of Italy, Bulgaria, Hungary, and

Rumania, subject to the conditions and limitations specified in sections 1, 3, 4, and 10 of said Public Law 690: *Provided, however*, That nothing in this Act shall affect any act which has been or shall be done by virtue of special measures taken under legislative, executive, administrative, or military authority of the United States during World War II.

Sec. 3. Nationals of Germany and Japan may hereafter apply for and obtain patents in the United States for their inventions in accordance with the patent laws and enjoy the rights and privileges thereof: *Provided, however*, That patents obtained for such inventions shall be subject to any conditions and limitations with respect to duration, revocation, utilization, assignment, and licensing which may be imposed by Congress, or by the President in accordance with the provisions of any peace treaty hereafter entered into with Germany or Japan: *And provided further*, That, except for patents based on applications filed in the United States Patent Office prior to the date of enactment of this Act, patents may not be applied for or obtained, or if obtained, shall not be valid, for any invention made, or upon which an application was filed by any such national, before January 1, 1946, in Germany or Japan or in the territory of any other of the Axis Powers or in any territory occupied by the Axis forces.

Approved August 6, 1947.

August 14, 1947

SIR: I wish to express my satisfaction at the successful conclusion of discussions with the Government of the United States of America concerning commercial policy and related matters of mutual interest in furthering the economic relations between the Governments of the United States of America and Italy.

I am authorized to inform you that my Government agrees to the following understandings which have resulted from these discussions:

1. The two Governments affirm their continued support of the principles set forth in the notes exchanged between them December 6, 1945, and reiterate their desire to achieve the elimination of all forms of discriminatory treatment in international commerce and the reduction of tariffs and other trade barriers.

2. The two Governments having already entered into preliminary discussions concerning a comprehensive treaty of friendship, commerce and navigation which will regulate to their mutual satisfaction economic relations between the two countries, express their intention to enter into negotiations looking toward the conclusion of such a treaty this year. Meanwhile, the two Governments will continue to accord to articles the growth, produce or manufacture of the other, unconditional most-favored-nation treatment with respect to customs duties, the rules and formalities of customs, and the taxation, sale, distribution, and use within its territory of such articles.

I am also authorized, on behalf of my Government, to advise you that the Government of Italy has been following with deep interest the steps being taken to form an international trade organization of the United Nations and is in full agreement on the fundamental principles of the proposed charter for such an organization.

Accept [etc.]

LOMBARDO
*Chief of the Italian Economic
and Financial Delegation*

The Honorable
ROBERT A. LOVETT,
Acting Secretary of State.

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date in the following terms:

[Here is repeated text of preceding letter.]

On behalf of my Government, I wish to confirm to you the agreements set forth in your note. I also wish to express my Government's appreciation for the views you have stated, on behalf of your Government, with respect to the International Trade Organization.

Accept [etc.]

ROBERT A. LOVETT
Acting Secretary of State

The Honorable
IVAN MATTEO LOMBARDO,
*Chief of the Italian Economic
and Financial Delegation.*

August 14, 1947

SIR: I have the honor to refer to the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States nationals" signed this date.

In consideration of the undertakings by the Government of the United States of America, provided therein, dealing with the question of vessels which were under Italian registry and flag on September 1, 1939, I am authorized, on behalf of my Government, to enter into the following undertakings:

Notwithstanding the fact that the return of the passenger vessels *Conte Grande* and *Conte Biancamano* supersedes the operating agreement relating to these vessels concluded between the Government of Italy and the United States Maritime Commission, dated May 2, 1947, in implementation of an understanding set forth in an aide memoire of January 8, 1947 from the

Department of State to the Embassy of Italy in Washington, relating to these vessels and also to the operation of the Italian passenger vessels *Saturnia* and *Vulcania*, the Government of Italy agrees that, for the period up to and including December 31, 1949, or for such time during that period that the vessels *Saturnia* and *Vulcania* are under Italian ownership and control, their operation will be continued subject to the rights and privileges of the Government of the United States of America as set forth in the aforesaid aide memoire of January 8, 1947, and under arrangements substantially similar to those currently applying to the M. V. *Saturnia*, subject to such modifications to these arrangements as may be agreed to in the light of existing conditions.

Accept [etc.]

LOMBARDO

*Chief of the Italian Economic
and Financial Delegation*

The Honorable

ROBERT A. LOVETT,

Acting Secretary of State.

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date, in the following terms:

[Here is repeated text of preceding letter.]

On behalf of my Government, I am pleased to accept the undertakings of the Government of Italy, as set forth in your note, with reference to the operation of the Italian passenger vessels *Saturnia* and *Vulcania*. At such time as your Government may wish to discuss modifications to the existing arrangements, appropriate officials of this Government will be prepared to enter into the necessary discussions.

Accept [etc.]

ROBERT A. LOVETT

Acting Secretary of State

The Honorable

IVAN MATTEO LOMBARDO,

*Chief of the Italian Economic
and Financial Delegation.*

August 14, 1947

SIR: With reference to Article 4 of the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding settlement of certain wartime claims and related matters," signed this date, I am pleased to be able to advise you on behalf of the Government of Italy that a plan has been prepared for adjusting the unrepatriated bonds of the Italian dollar issue, service on which has been suspended since 1940.

The proposed plan, which has been approved in principle by the Foreign Bond Holders Protective Council, Inc., will embrace all publicly held dollar bonds comprising three groups: first, bonds of the Kingdom of Italy; second, bonds of the Cities of Rome and Milan, bonds of the Italian Credit Consortium for Public Works, and bonds of the Mortgage Bank of the Venetian Provinces; and third, bonds of the Italian Credit Institute for Public Utility Enterprises and of eleven public utility corporations.

New bonds will be issued in an amount equal to the principal of the old bonds plus all arrears thereof at the former rates to January 1, 1947. The new bonds to be issued in exchange for the Kingdom of Italy bonds will be issued by the Republic, while those issued in exchange of the old bonds in the second and third groups will be bonds of the Consortium and the Institute respectively, in each case guaranteed as to principal and interest by the Republic.

The new bonds in all three groups are expected to bear interest at 1 percent for 1947, 1948 and 1949; 2 percent for 1950 and 1951; and 3 percent beginning 1952. The first installment of interest on the new bonds will be paid in cash at the time of exchange. Commencing in January 1952 the three issues of bonds will be entitled to a cumulative sinking fund of 1 percent per annum for 1952 to 1956 inclusive and 2 percent per annum beginning in 1957.

It is expected that the full details of the plan will be made public and the offer to the old bond holders will be made in the near future, as soon as the necessary registration under the Security Act of 1933 and other arrangements are completed. There is enclosed herewith for your information additional details concerning the proposed plan.

Accept [etc.]

LOMBARDO

*Chief of the Italian Economic
and Financial Delegation*

Enclosure:

Italian Dollar Bond Tabulation.

The Honorable

ROBERT A. LOVETT,

Acting Secretary of State.

ITALIAN DOLLAR BONDS

There are presently outstanding approximately \$108,000,000 of non-repatriated Italian dollar bonds on which service was suspended on June 10, 1940, and it is the desire of the Government of Italy to make an adjustment with respect thereto.

These obligations fall into three categories: first, bonds issued by the Government of Italy; second, bonds issued by the Cities of Rome and Milan and by the Italian Credit Consortium for Public Works, and the Mortgage

Bank of the Venetian Provinces; and third, various corporate obligations. In connection with formulating an adjustment of Italian dollar bonds, it has been considered advisable to issue three types of obligations—one a direct obligation of the Government of Italy, to be issued in exchange for bonds falling within the first category and the other two being obligations of semi-governmental agencies, guaranteed as to principal and interest by the Government of Italy, to be issued in exchange for bonds falling within the second and third categories.

I. *Bonds of the Kingdom of Italy:*

The issue of the above obligor to be considered in the following:

Issue	Maturity	Interest Dates
Kingdom of Italy.....	7s, 1951	J & D 1

II. *Bonds of the Cities of Rome and Milan, the Italian Credit Consortium for Public Works and the Mortgage Bank of the Venetian Provinces:*

Issue	Maturity	Interest Dates
City of Milan.....	6½s, 1952	A & O 1
City of Rome.....	6½s, 1952	A & O 1
Consortium for Public Works.....	7s, 1947	M & S 1
Mortgage Bank of the Venetian Provinces.....	7s, 1952	A & O 1

III. *Corporate Obligations:*

The Corporate obligations outstanding are twelve issues of dollar bonds, 8 of which represent, directly or indirectly, obligations of utility companies and 4 of industrial companies. These obligations are the following:

Issue	Maturity	Interest Dates
Italian Public Utility Credit Institute.....	7s, 1952	J & J 1
Adriatic Electric [sic] Co.....	7s, 1952	A & O 1
Piedmont Hydro-Electric Co.....	6½s, 1960	A & O 1
Lombard Electric [sic] Co.....	7s, 1952	J & D 1
Isarco Hydro-Electric Co.....	7s, 1952	M & N 1
Meridionale Electric Co.....	7s, 1957	A & O 1
United Electric Service Co.....	7s, 1956	J & D 1
Terni Industrial and Electric Co.....	6½s, 1953	F & A 1
Isotta Fraschini Automobile Factory.....	7s, 1952	J & D 1
Ercole Marelli Electric Manufacturing Co.....	6½s, 1953	M & N 1
Ernesto Breda Co.....	7s, 1954	F & A 1
Crespi Cotton Works *.....	7s, 1952	M & N 1

* The lira bonds of Crespi Cotton Works, Ltd. (now Italian Textile Establishment, Milan) were originally sold in the U. S. with provision for payment in dollars at a rate of not less than 3.64 cents to the lira.

In order to effect an adjustment with the holders of such obligations, the following plan is proposed:

1. (a) The Government of Italy will offer a like principal amount of its 3 percent 30 year External Sinking Fund Bonds in exchange for the outstanding principal amount of the obligations of the Kingdom of Italy.

(b) The Italian Credit Consortium for Public Works, one of the present obligors and a semi-governmental agency, will offer (pursuant to authority granted by the Government of Italy) its bonds in exchange for the outstanding principal amount of the obligations of the Cities of Rome and Milan, the Italian Credit Consortium for Public Works and the Mortgage Bank of the Venetian Provinces. The entire debt service on such bonds will be guaranteed by the Government of Italy.

(c) The Italian Public Utility Credit Institute, one of the present obligors and a semi-governmental agency, will offer (pursuant to authority granted by the Government of Italy) its bonds in exchange for the outstanding principal amount of the twelve corporate issues. The entire debt service on such bonds will be guaranteed by the Government of Italy.

2. Semi-annual interest payments on the three issues of bonds will accrue from January 1, 1947. Interest will be paid in 1947, 1948 and 1949 at the rate of 1 percent per annum; in 1950 and 1951 at the rate of 2 percent per annum; and in 1952 and subsequent years at the rate of 3 percent per annum. Upon exchange of old bonds for new bonds, a cash payment will be made for interest accrued from January 1, 1947 to July 1, 1947, at the rate of 1 percent per annum.

3. Interest in arrears on the various bond issues will be computed at the rates stated in the bonds from the date of the last coupon payment to January 1, 1947 and additional (a) Government of Italy Bonds, or (b) Italian Credit Consortium for Public Works Bonds, or (c) Italian Public Utility Credit Institute Bonds, as the case may be, will be issued in settlement thereof, except that no bonds will be issued in principal amounts of less than \$100. Any balance which may be due on account of accrued interest over and above a multiple of \$100 will be discharged by an equal face amount of non-interest bearing scrip exchangeable for Government of Italy bonds or Italian Credit Consortium for Public Works bonds or Italian Public Utility Credit Institute Bonds, as the case may be, in aggregate amounts of \$100 or any multiple thereof.

4. Commencing January 1, 1952, the three issues of bonds will be entitled to a cumulative sinking fund, calculated on the nominal amount of bonds to be outstanding initially, at the following rates:

1952 to 1956 inclusive.....	1% per annum
1957 and subsequent years.....	2% per annum

such sinking fund to be applied semi-annually to the purchase of bonds at or below par or to the extent not so obtainable in redemption at par of bonds to be selected by drawings.

5. The Government of Italy is prepared to agree to set aside monthly in a segregated account with the Bank of Italy foreign exchange equivalent to $\frac{1}{8}$ of the semi-annual service requirement for the three issues of bonds.

The respective approximate principal amount of the three proposed 3 percent thirty year bonds to be outstanding (including bonds issued in settlement of all arrears of interest to January 1, 1947) are shown in the attached tabulation, which also sets forth a schedule of the relative interest and amortization payments.

No provision is being made at this time for the outstanding bonds of the General Italian Edison Electric Company, all of which bonds are owned by the International Power Securities Corporation because of negotiations presently being conducted by General Italian Edison Electric Company with the International Power Securities Corporation looking toward the exchange of such bonds for stocks of the General Italian Edison Electric Company.

PROPOSED ITALIAN ISSUES TO BE DATED AS OF JANUARY 1, 1947, DUE 1977

	Government issue	Credit consortium	Pub. utility credit institute	Total	
Original principal amount to be outstanding.....	\$40,257,310	\$38,055,462	\$58,065,712	\$136,378,485	
Semiannual service requirements				Total service	
				Semiannual	Annual
1947 to 1949					
Interest 1%.....	\$201,286	\$190,277	\$290,328	\$681,891	\$1,363,782
1950 to 1951					
Interest 2%.....	402,573	380,544	580,657	1,363,784	2,727,568
1952 to 1956					
Interest 3%; sinking fund 1%.....	805,145	761,108	1,161,313	2,727,566	5,455,132
1957 to 1977					
Interest 3%; sinking fund 2%.....	1,006,432	951,385	1,451,042	3,409,439	6,818,918
Amount of bonds retired at par 6th to 10th years.....	2,154,308	2,036,481	3,107,299	7,298,088	.....
% of original issue.....	.....	.....	.....	5.35%	.....
Amount of bonds retired at par 11th to 30th years.....	21,846,788	20,651,864	31,511,032	74,009,684	.....
% of original issue.....	.....	.....	.....	.....	.....
Amount of bonds retired at par 6th to 30th years.....	24,001,096	22,688,343	34,618,331	81,307,772	.....
% of original issue.....	.....	.....	.....	59.62%	.....

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date in the following terms:

[Here is repeated text of preceding letter.]

The plan proposed by you with respect to the unrepatriated bonds of the Italian dollar issues, service on which has been suspended since 1940, satis-

factorily complies with the obligations undertaken by the Government of Italy in paragraph 17 of Article IV of the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding settlement of certain wartime claims and related matters."

Accept [etc.]

ROBERT A. LOVETT
Acting Secretary of State

UNREPATRIATED BONDS OUTSTANDING

Interest dates	Principal amount outstanding	Interest arrears to Dec. 31, 1946 Amount	Total	Approximate amount of new bonds
<i>Kingdom of Italy—7s, 1951</i>		%		
J & D 1.....	27,558,400	46.08	12,698,910.72	.....
<i>City of Milan—6½s, 1958</i>				
A & O 1.....	13,092,900	43.87	5,743,811.36	18,836,611.36
<i>City of Rome—6½s, 1958</i>				
A & O 1.....	9,911,800	43.87	4,348,306.66	14,260,106.66
<i>Credit Consortium—7s, 1947</i>				
M & S 1.....	2,704,000	47.83	1,293,323.20	3,997,323.20
<i>Mortgage Bank of Venetian Provinces— 7s, 1958</i>				
A & O 1.....	666,500	47.25	314,921.25	981,421.25
	26,375,100	11,700,362.47	.....	38,055,462.47
<i>Ital. Pub. U. Cr. Inst.—7s, 1958</i>				
J & J 1.....	7,878,500	49.00	3,860,465.00	11,738,965.00
<i>Adriatic Elec. Co.—7s, 1958</i>				
A & O 1.....	2,091,000	47.25	987,997.50	3,078,997.50
<i>Piedmont H-E Co.—6½s, 1950</i>				
A & O 1.....	5,473,000	43.87	2,401,005.10	7,874,005.10
<i>Lombard Elec. Co.—7s, 1958</i>				
J & D 1.....	2,879,000	46.08	1,326,643.20	4,205,643.20
<i>Iscarco H-E Co.—7s, 1958</i>				
M & N 1.....	2,091,500	46.67	976,103.05	3,067,603.05
<i>Meridionale Elec. Co.—7s, 1957</i>				
A & O 1.....	8,765,500	47.25	4,145,698.75	12,907,198.75
<i>United Elec. Service Co.—7s, 1958</i>				
J & D 1.....	2,748,000	46.08	1,266,278.40	4,014,278.40
<i>Terni Ind. & Elec. Co.—6½s, 1958</i>				
F & A 1.....	5,032,000	44.96	2,262,387.20	7,294,387.20
<i>Isotta Frasch. Auto Factory—7s, 1948</i>				
J & D 1.....	253,000	46.08	116,582.40	369,582.40
<i>Brooks Marelli Elec. Co.—6½s, 1958</i>				
M & M 1.....	1,022,000	43.83	442,852.60	1,464,852.60
<i>Ernesto Breda Co.—7s, 1954</i>				
F & A 1.....	983,000	48.42	475,968.60	1,458,968.60
<i>Ital. Textile Estab. Milan—7s, 1958</i>				
M & N 1.....	*389,480	46.67	181,770.32	571,250.32
	39,605,980	18,439,732.12	.....	58,065,712.12
	27,558,400	12,698,910.72	.....	40,257,310.72
	26,375,100	11,700,362.47	.....	38,055,462.47
	39,605,980	18,439,732.12	.....	58,065,712.12
	93,539,480	42,839,005.31	.....	136,378,485.31

* The principal amount of bonds outstanding is Lira 10,700,000.

The Honorable
IVAN MATTEO LOMBARDO,
*Chief of the Italian Economic
and Financial Delegation.*

August 14, 1947

SIR: Reference is made to Article III, paragraph 16, of the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding settlement of certain war-time claims and related matters," signed this date.

One of the more troublesome problems which has arisen in connection with Article 78 of the Treaty of Peace has been concerned with the property in Italy of American oil companies. The principal difficulty which has been encountered in returning such properties to the rightful owners has been the question of the employment rights which accrued during the period of control of the American oil companies by the Government of Italy.

I am authorized by my Government to advise you of the following agreement on the question of employment rights which has been reached between the Government of Italy and representatives of the oil companies:

1. The Anglo-American companies (which had originally requested the Government of Italy to consider as broken the continuity of employment for the employees on their pay rolls at the moment of liquidation of the companies) have now in principle agreed to re-engage 95 percent of the personnel. The Azienda Generale Italiana Petroli on its side shall in full agreement with the Italian Treasury pay the indemnities for the period running from the date of the liquidation to the date of reemployment. The implementation of this formula can be expected to take place in the very near future.

2. An agreement has been reached on the partitioning of the market between the foreign companies on the one side and Azienda Generale Italiana Petroli on the other side. This agreement has involved considerable sacrifice on the part of Azienda Generale Italiana Petroli.

3. Insofar as the war damages suffered by the American companies are concerned the duty of the Government of Italy derives from Article 78 of the Treaty of Peace, and the policy applied will be in accordance with Article III, paragraph 16, of the above referred to Memorandum of Understanding.

It is also understood that the properties and all assets will be returned, including, of course, the employee compensation funds which were on hand at the date of liquidation and which represent the funds available for persons still employed by the companies.

This agreement was made known to the representatives of the American oil companies in the United States of America concerned with this problem,

as well as to officials of your Department, all of whom signified their approval.

I can, therefore, confirm to you that the Government of Italy accepts all the above engagements and will implement them at the earliest possible date.

Accept [etc.]

LOMBARDO
*Chief of the Italian Economic
and Financial Delegation*

The Honorable

ROBERT A. LOVETT,
Acting Secretary of State.

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date in the following terms:

[Here is repeated text of preceding letter.]

My Government is very pleased to know that the question of the return of the properties in Italy of American oil companies has been resolved in the manner set forth in your note. The solution is consistent with the terms of Article III, paragraph 16, of the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding settlement of certain wartime claims and related matters" signed this date.

Accept [etc.]

ROBERT A. LOVETT
Acting Secretary of State

The Honorable

IVAN MATTEO LOMBARDO,
*Chief of the Italian Economic
and Financial Delegation.*

August 14, 1947

SIR: I have the honor to refer to the "Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding Italian assets in the United States of America and certain claims of United States nationals," signed this date.

Questions have been raised by you concerning:

(1) the scope of paragraph (a) (ii) of Annex I to the memorandum referred to above;

(2) the meaning of the final (unnumbered) paragraph of Annex I; and

(3) whether, with respect to the revocable, royalty-free, non-exclusive licenses granted by the United States of America, the Government of the United States of America will object if, after the return of such properties,

the owners may negotiate with the licensees with a view to altering the terms of the licenses granted to them by the Government of the United States of America.

I am in receipt of the following letter from Mr. David L. Bazelon, Assistant Attorney General, Director of Alien Property, dated August 12, 1947:

My advisors have informed me that during the July 2, 1947 conference on the documents implementing and/or supplementing the Treaty of Peace with Italy, members of the Italian delegation raised several questions regarding the meaning and scope of certain sections of Annex I of the Memorandum of Understanding between the Government of the United States of America and the Government of Italy regarding Italian assets in the United States and certain claims of United States nationals. Since the questions raised relate to vested property, representatives of the Department of State have asked for my comments and observations.

The members of the Italian delegation have inquired as to the scope of paragraph (a) (2) of Annex I mentioned above. The paragraph under reference provides that the United States does not intend to assume any obligation to make returns to any person, firm, or organization convicted of violation of any of the statutes set forth in Section 34 (a) of the Trading with the Enemy Act, as amended. The statutes (Title II and III of the Act of June 15, 1917, 40 Stat. 217, 220, 221, as amended) prohibiting commission of injury to vessels on the high seas or within the jurisdiction of the United States are not among the statutes enumerated in Section 34 (a) of the Trading with the Enemy Act, as amended. Hence, acts of sabotage committed on Italian vessels which were subsequently vested by the United States Alien Property Custodian will not in themselves be grounds for refusal to return the interest acquired in such vessels by vesting action.

The members of the Italian delegation have also raised questions with respect to the meaning of the final (unnumbered) paragraph of Annex I. The paragraph under reference provides that the United States intends to return, pursuant to the provisions of Article I, paragraph 1 (a) of the Memorandum of Understanding mentioned above, literary, artistic or industrial property vested by the United States Alien Property Custodian from the Italian Government or from Italian nationals. *Literary, artistic or industrial property so returned will remain subject to all licenses and agreements for licenses granted or entered into by the United States and which are in effect prior to the return of such properties.*

It is the intention to return the proceeds from licenses and agreements for licenses granted or entered into by the United States with respect to literary and artistic property. Such proceeds will be subject to return pursuant to Article I, paragraph 1 (a), of the Memorandum of Understanding. With respect to industrial property where the United States has granted revocable, royalty-free, non-exclusive licenses it is the intention of the United States not to issue additional similar licenses or to reissue any such licenses which have been cancelled or revoked.

With respect to the revocable, royalty-free, non-exclusive licenses granted by the United States, members of the Italian delegation have inquired whether the United States Government will object if, after the return of such properties, the owners negotiate with the licensees with a view to altering the terms of the licenses granted to them by the United States. It is not the intention of the United States to interpose any objection to such negotiations, provided that such negotiations and any changes in the terms of the licenses are in conformity with all laws of the United States, including the anti-trust laws. Also, it must be clearly understood that the United States assumes no obligations with respect to these negotiations and the licensees are in no way obligated to negotiate any changes in the terms of the licenses granted to them by the United States.

Accept [etc.]

- ROBERT A. LOVETT
Acting Secretary of State

The Honorable

IVAN MATTEO LOMBARDO,
*Chief of the Italian Economic
and Financial Delegation.*

August 14, 1947

SIR: I have the honor to acknowledge receipt of your note of this date, in the following terms:

[Here is repeated text of preceding letter.]

I appreciate very much the information set forth in your note.

LOMBARDO
*Chief of the Italian Economic
and Financial Delegation*

The Honorable

ROBERT A. LOVETT,
Acting Secretary of State.

August 14, 1947

SIR: In recent discussions held between representatives of my Government and members of the United States Treasury, it was indicated that your Department is now prepared to institute a procedure for the release of Italian assets now blocked under Executive Order No. 8389 and the United States Trading with the Enemy Act of 1917 as amended.

I have studied General License No. 95 of your Department which it has been suggested might be made applicable to Italy. After consultation with my colleagues I confirm in this connection my agreement on the following points:

1. The competent Italian authorities will assume the responsibility for carrying out the procedure of certification provided for by the license. No

property will be certified until the Government of Italy has ascertained, by an appropriate investigation, that the property is not excluded from the benefits of the license. Moreover, in regard to certain accounts which may from time to time be specifically designated by your Department, the Italian Ministry of Treasury will consult with your Department prior to making the certification provided for in the proposed license.

2. In determining whether cash accounts maintained in the United States of America in the names of banks and other financial institutions in Italy are eligible for certification, it will be considered that persons maintaining dollar accounts with such institutions have an interest in corresponding portions of the accounts in the United States of America. In addition, persons having stock or other interest in any holding company, investment trust, foundation, family trust, or similar organization or institution will be considered as having a direct proportionate interest in the assets owned by the organization or institution regardless of the formal nature of their interest, but this principle shall not be deemed to authorize the certification of any assets held by any such organization or institution which itself is ineligible for certification.

3. It is understood that within the framework of the general license no certifications will be issued which:

- (a) would facilitate the completion of transactions which would further the interests of an enemy of the United States of America or persons acting upon behalf of such an enemy;
- (b) would change the status quo of blocked property in the United States of America in which an enemy of the United States of America has an interest direct or indirect.

4. As to the property of any partnership, association, corporation or any other organization, established in accordance with the laws of Italy, which by reason of the interests of persons not resident in Italy, is also a national of another country designated in the freezing order, within the meaning of General License No. 95, no certification will be made until full assurances have first been obtained from the government of the other country to the specific effect that no national of Germany or Japan is involved in the ownership or control of such interests. For reasons of simplification, however, the Italian authorities may, on their own responsibility, certify property of any organization in which the proportion of such interests is less than 25 percent.

With respect to any property not covered by the preceding paragraph in which any other country specified in General License No. 95 or any national thereof has an interest, my Government will not certify until full assurances have been obtained from the other government that such interest itself is entitled to certification under the license. It is understood, how-

ever, that it will not be necessary to obtain such assurances where the value of the property involved is less than \$1,000.

5. If property in which there is an interest of an enemy of the United States of America is transferred under the American license inadvertently or by mistake, your Department will be consulted and, at its request, appropriate measures will be taken to ensure that such property or its equivalent will be restored to the account in which it was held before being transferred, or to such other account as you may designate, but only to the extent, however, to which such property or its equivalent may be found in the assets of the acquirer or of the original owner.

6. The competent Italian authorities and the United States Treasury Department will make joint efforts with a view to investigating and controlling all German and other assets in which any enemy of the United States of America may have an interest, both in the United States of America and in Italy, in order to deprive war criminals and potential leaders of the underground or any such enemy of means of existing and of jeopardizing the peace. In particular, the Italian Ministry of Treasury and the United States Treasury Department will take all steps necessary to prevent the financial facilities which our two countries will grant each other from being utilized by any person subject to Italian or American jurisdiction in such a manner as might allow enemies of the United States of America or their agents to conceal assets in the United States of America or Italy, or any other country. To this end our two countries will exchange all information required to carry out this task and in particular the Government of Italy, which has already undertaken a vigorous program to eliminate economic and financial interests in Italy, directly or indirectly controlled by enemies of the United States of America, will keep your Government fully informed with regard to property held in the United States of America under an Italian name in which it has reason to believe that there is any such enemy interest, direct or indirect. The Italian Ministry of Treasury will likewise furnish your Department with all information concerning Italian institutions which hold in the United States of America property in which an enemy of the United States of America might have an interest.

7. It is understood that nationals of the United States of America holding assets in Italy shall be authorized to administer such assets and their income, within the framework of the controls and regulations of the Government of Italy, without the application of measures to them which would be discriminatory in relation to nationals of any other country.

The sequestration measures imposed during the course of the war on property, rights and interests belonging to nationals of the United States of America have been removed in all important particulars and, in accordance with Article 78 of the Treaty of Peace with Italy of 1947 and the

financial agreement recently concluded between our Governments, steps will be instituted immediately to remove any such measures which still remain.

Except for particular cases in which the Italian authorities have reason to believe that the maintenance of control is necessary to prevent transfers of assets in which any enemy of the United States of America might have an interest or to avoid the completion of transactions which might directly or indirectly be to the benefit of such an enemy, the Italian authorities, with regard to assets in Italy of nationals of the United States of America, will also abolish all restrictions imposed for the purpose of controlling property in which an enemy interest might have existed.

8. Concerning transfers from Italy to the United States of America it is the intention of my Government to pursue a policy of liberalizing exchange control restrictions to the fullest extent that the Italian foreign exchange position will permit. Insofar as the Italian foreign exchange position will permit, the competent Italian authorities will give sympathetic consideration to requests for current payments from Italy to the United States of America of profits, dividends, interests, royalties, payments for purposes of duly authorized commercial transactions and other payments relating to current business, including balances accrued from the same sources during the war.

The competent Italian authorities will, insofar as the Italian foreign exchange position permits, authorize persons residing in Italy who without having violated Italian law owe dollar obligations to any governmental agency, individual or firm in the United States of America, to settle their indebtedness on maturity and provide the foreign exchange necessary to that end.

The competent Italian authorities, moreover, will examine carefully requests by American citizens wherever located or by residents of the United States of America for transfers of capital from Italy to the United States of America where such transfers involve small amounts and are of substantial importance to the interested parties.

Accept [etc.]

LOMBARDO

*Chief of the Italian Economic
and Financial Delegation*

The Honorable

JOHN W. SNYDER,

Secretary of the Treasury.

*c. U. S. to Return Italian Naval Vessels Allotted Under Terms of Peace Treaty: Message from the Secretary of State to the Italian Foreign Minister **

* Delivered by the American Ambassador to Italy, James C. Dunn, to the Italian Foreign Minister, Count Carlo Sforza.

October 5, 1947

The Government of the United States has determined to decline to accept any of the Italian naval vessels allotted to it under the terms of the Treaty of Peace with Italy and of the Four Power Naval Protocol of February 10, 1947.

The United States Government has not forgotten the valiant service of the Italian Navy in association with our own Naval forces during Italy's cobelligerency. It is the desire of the Government of the United States that these former vessels of war be scrapped and utilized by Italy, under the terms of the Protocol, as a contribution to the continued recovery of the Italian economy. Thus these weapons of war may in the end serve Italy's reconstruction and the building of a peaceful life for the Italian people.

*d. Italian Gold Uncovered by Allies Returned to Italian Government **

The Governments of the United States of America and of the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Government of Italy, on the other, have agreed as follows:

1. The gold which was captured at Fortezza by the Allied Forces in Italy from the German forces, which was still in the custody of officials of the Bank of Italy at the time of capture, and which has since that time remained in the custody of the appropriate agency of the Allied military authorities, shall be turned over to the Italian Government now that the treaty of peace signed in Paris on February 10, 1947 has entered into force.

2. The Italian Government will immediately appoint representatives to discuss with the Allied military authorities the necessary details of transferring this gold from the custody of the Allied military authorities to the custody of the Italian Government.

The present protocol shall be deemed to have come into force on the day of the coming in force of the treaty of peace. In faith whereof the undersigned plenipotentiaries have signed the present protocol.

Done in London in triplicate this 10th day of October 1947 in the English and Italian languages, both texts being equally authentic.

The agreement was signed on behalf of the Government of the United States by Waldemar J. Gallman, American Chargé d'Affaires; for the United Kingdom by Foreign Minister Ernest Bevin; and for Italy by Bartolomeo Migone, Italian Chargé d'Affaires.

* *Department of States Bulletin*, Vol. XVII, No. 483, p. 770. Printed from telegraphic text.

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THE NINTH INTERNATIONAL CONFERENCE OF AMERICAN STATES

BY CHARLES G. FENWICK *

When the Eighth International Conference of American States met at Lima in 1938 it was planned that the Ninth Conference should meet at Bogotá, Colombia, in 1943. The outbreak of the war in 1939, however, called for emergency measures in the form of three consultative meetings of Foreign Ministers and a special conference held at Mexico City in 1945. The First Meeting of Foreign Ministers at Panama in 1939 laid the basis for the maintenance of continental neutrality in accordance with standards of neutral conduct formally set forth in the Declaration of Panama. The Second Meeting of Foreign Ministers, held at Habana in 1940, proclaimed the principle of mutual defense against an attack by a non-American State and adopted measures to prevent the transfer of territory in the Western Hemisphere from one non-American State to another. The Third Meeting of Foreign Ministers, called in January 1942 after the entrance of the United States into the war, called for the breaking of diplomatic relations with the Axis Powers and for other measures of continental defense against the subversive activities of agents of the Axis Powers. In 1945, a special conference assembled in Mexico City to consolidate the defensive measures of the American States and to make plans in anticipation of the conference to be held at San Francisco for the establishment of a general international organization for the maintenance of peace. This was followed by another special conference held at Rio de Janeiro in 1947 in which the collective security provisions adopted at Mexico City were given permanent form in the Treaty of Reciprocal Assistance.

Thus when the Ninth International Conference of American States assembled at Bogotá on March 30, 1948, the number which it bore described only its place in the list of conferences originally planned at Washington in 1890. Its importance, however, was in no way lessened by the intervening meetings of Foreign Ministers and special conferences. The conferences at Mexico City and at Rio de Janeiro had proclaimed new principles of continental security; but it was still necessary to give structural unity to the whole inter-American system and to supplement the treaty of collective security with agreements looking to the pacific settlement of dis-

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putes and to the development of economic and social cooperation.¹ Numerous resolutions and declarations of previous conferences and meetings of Foreign Ministers had to be brought together and coördinated if the American States were to present a united front and to live up to their role as a regional group within the larger organization of the United Nations.

All of the twenty-one American States were represented at the Conference. A question had arisen whether the Government of Nicaragua should be invited to attend, in view of the fact that it had not been recognized by a number of American States; and a special committee had been appointed by the Governing Board to prepare a report on the case. A majority of the committee decided that it would be desirable that Nicaragua should be represented and that it should be left to the Government of Colombia, as host of the Conference, to decide between "convoking" the conference or merely issuing invitations to it, the latter procedure being followed.² The importance of the Conference was indicated by the presence of ten Foreign Ministers, including the Secretary of State of the United States. At the same time eight members of the Governing Board of the Pan American Union were among the delegations of their respective countries.

Program of the Conference

The program of the Conference had been prepared with great care by the Governing Board of the Pan American Union. It was divided into five chapters, dealing respectively with the reorganization, consolidation and strengthening of the inter-American system, economic matters, juridico-political matters, and social matters. Accompanying the program were numerous draft treaties, declarations and other documents which had been prepared by the Governing Board and by the Inter-American Juridical Committee in response to the resolutions of previous conferences and meetings of Foreign Ministers. As on previous occasions, the Pan American Union prepared a *Handbook* setting forth the program of the conference, the regulations under which it was to function, and detailed memoranda on the topics of the program.³

¹ The Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947, calls attention in its preamble to the intention of the parties to conclude the treaty on "The Inter-American Peace System" contemplated in resolutions adopted at the Conference on Problems of War and Peace, held at Mexico City in 1945. Resolution IX of the Final Act of the Rio de Janeiro Conference called upon the Inter-American Economic and Social Council to prepare a "basic draft agreement" on inter-American economic cooperation, to be submitted to the Conference at Bogotá.

² See *Informe de la Comisión Especial para Estudiar la Consulta del Gobierno de Colombia sobre la Participación de Nicaragua en la Conferencia de Bogotá*, March 8, 1948. Pan American Union.

³ See *Handbook for Delegates to the Ninth International Conference of American States*. Pan American Union, 1947.

The Reorganization of the Inter-American System

By far the most important work before the Conference was the reorganization of the inter-American system. Two committees were appointed by the Conference to deal with the subject, the first concerning itself principally with the nature and purposes of the inter-American system and the second with problems of organization. As is customary at inter-American conferences, the committees consisted of twenty-one members, representing the full membership of the Conference.

In the formulation of the treaty on the reorganization of the inter-American system the two committees had before them the draft of an Organic Pact prepared by the Governing Board of the Pan American Union.⁴ This draft embodied the preliminary conclusions of the twenty-one governments represented on the Board, subject, however, to the right of each government to modify the document when subsequently presented to the Conference. This right was freely exercised by the delegates to the Conference, in fact, so freely exercised in this case as to emphasize the personal element in the foreign policy of many countries.

Sharp discussions took place with regard to the name to be given to the reorganized inter-American system. The term "System" seemed to lack juridical character. The existing name, "Union of American Republics," adopted in 1910 as a modified form of the original "International Union of American Republics," was opposed by a number of delegations, principally that of Argentina, on the ground that the term "union" implied a sort of "super-state."⁵ The suggestion that the name "Pan American Union," applied since 1910 to the bureau serving as the agent of the Union of American Republics, should now be applied to the parent body had previously been rejected by the Governing Board of the Pan American Union. Finally the Conference settled upon the name, "Organization of American States," using the term "organization" in the same non-technical sense in which it is used in the Charter of the United Nations. The term "Charter" replaces the designation "Organic Pact" used in the draft project prepared by the Pan American Union.⁶

Chapter I, on the nature and purposes of the Organization, does no more than express in somewhat more definite form ideals of coöperation which have long since been recognized as the objectives of the inter-American system. Attention should, however, be given to the statement that, "Within the United Nations, the Organization of American States is a regional agency." Succeeding chapters deal with the "Principles" of the Organization and with the "Fundamental Rights and Duties of States."

⁴ *Project of Organic Pact of the Inter-American System*. Pan American Union, 1948.

⁵ See *Diario de la IX Conferencia Internacional Americana*, No. 15, pp. 272 ff.

⁶ A preliminary text of the Charter in English is available at the Pan American Union. A definitive text will appear with the usual report of the Secretary General.

The distinction between the subject matter of the two titles is not clear, but on the whole the chapter on "Principles" deals with certain broader aspects of inter-American conduct and the chapter on "Fundamental Rights and Duties of States" deals with specific juridical relations. Taken together the two chapters are the answer to the resolution of the Conference of Mexico City in 1945 which had called upon the Pan American Union to prepare a "Declaration of the Rights and Duties of States;" and they represent an elaboration, in terms of the conditions of 1948, of the articles of the Montevideo Convention of 1933 on the rights and duties of states. Marked differences of opinion appeared in the formulation of one of the articles (12), namely, that "the jurisdiction of states within the limits of their national territory is exercised equally over all the inhabitants, whether nationals or aliens." An additional paragraph had been inserted in committee to the effect that nationals and aliens were under the same protection of the law and that aliens might not claim rights other or more extensive than those of nationals. Did this second paragraph mean that the rule of diplomatic interposition in cases of denial of justice was being rejected? At the instance of the United States delegation the second paragraph was dropped; but the Mexican delegation, which had favored the paragraph, insisted that the substance of it was included in the terms of Article 12 which remained, as above noted.⁷

A significant feature of the articles repudiating aggression and intervention is the inclusion of economic aggression and economic coercion side by side with political. The meaning of the term "economic aggression" was a subject of debate, without, however, leading to any definite conclusions, Article 16 merely reciting that "no state may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another state and obtain from it advantages of any kind."

The repudiation of the right of intervention (Article 15), which appears in the strong form of the Protocol of 1936, is qualified in the Charter by the recognition of the distinction between the arbitrary intervention of a single state or a group of states and the collective intervention of the whole body of American States, Article 19 stating in somewhat vague terms that measures adopted for the maintenance of peace and security in accordance with existing treaties are not to constitute a violation of the principle of non-intervention set forth in previous articles.⁸

⁷ Compare Article 9 of the Convention on Rights and Duties of States, adopted at Montevideo in 1933. The United States signed the convention with reservations, and the problem remains unsolved at the present day.

⁸ The project prepared by the Governing Board of the Pan American Union stated more specifically that "The collective action envisaged in this Pact or in the Charter of the United Nations does not constitute intervention."

The Conference and the Meeting of Consultation

The Charter sets forth at length what are now called "the organs" of the new Organization of American States, being six in number: the Inter-American Conference, the Meeting of Consultation of Ministers of Foreign Affairs, the Council, the Pan American Union, the Specialized Conferences, and the Specialized Organizations.

It is of interest to note that the terms "Conference" and "Meeting of Consultation" are used in the singular deliberately, as indicating a certain continuity in the two bodies, similar more or less to the continuity of the United States Congress, or the continuity of the Assembly of the United Nations. The functions of the two bodies differ in that the Conference is "the supreme organ" of the Organization, deciding the general action and policy of the Organization and determining the structure and functions of its organs, whereas the Meeting of Consultation is to be held in order to consider problems of an urgent nature and to serve as the organ of consultation.⁹

The Council

The new Council of the Organization is substantially the old Governing Board of the Pan American Union, now detached from its more restricted association with the Pan American Union and brought more directly under control of the Conference and the Meeting of Consultation. It is composed of a representative of each of the members of the Organization, and it acts in the first place as a sort of permanent executive or administrative committee of the Conference and the Meeting of Consultation and, in the second place, as the organ of consultation in cases calling for such action in the event of emergencies. The Council has also the duty of supervising the specialized agencies of the Organization and of entering into agreements by which the activities of these agencies may be coördinated and their relations with the Organization be more definitely determined.¹⁰

The Charter provides that the Council is to have at its side three separate organs representing the full membership of the Organization: the Inter-American Economic and Social Council, the Inter-American Council of Jurists, and the Inter-American Cultural Council. The functions of these three councils are expressed more or less by their names, each having as

⁹ The Conference dates back to 1889, when the First International Conference of American States met in Washington, at the invitation of the United States. The term "International" is now abandoned in favor of "Inter-American."

¹⁰ The powers to be given to the Council were the subject of protracted debate. A number of the delegations called attention to the resolution of the Habana Conference of 1928 prohibiting both the Governing Board and the Pan American Union from exercising "functions of a political character," disregarding the fact that the Governing Board had already been given such functions. By detaching the Governing Board from its more direct association with the Union and calling it the "Council," the fears of the particular delegations were overcome.

its purpose to promote the particular field of inter-American relations and to serve as a technical body to assist the Council in arriving at conclusions with respect to the special field entrusted to it. Thus the Economic and Social Council has as its objective the better utilization of natural resources, the development of agriculture and industry and the raising of standards of living within the various states. The new Inter-American Council of Jurists is to serve as an advisory body on juridical matters, to promote the development and codification of public and private international law, and to study the possibility of obtaining uniformity in the legislation of the various American countries, in so far as that may appear desirable. The existing Inter-American Juridical Committee of Rio de Janeiro is retained as a "permanent committee of the Inter-American Council of Jurists." The Inter-American Cultural Council is intended to promote friendly relations and mutual understanding among the American peoples by means of educational, scientific and cultural exchange.¹¹

The Pan American Union

The Pan American Union retains under the new Charter substantially the same position it held previously. Article 78 describes the Union as "the central and permanent organ of the Organization of American States and the General Secretariat of the Organization." The retention of the name "Union" was justified by the record of the Union during more than half a century, which was described by one delegation after another in highly laudatory statements. The fact that the term "union" is, in its technical sense, scarcely applicable to the Secretariat of the Organization was subordinated, therefore, to tradition and sentiment.¹² By special resolution of the Conference the former Director General of the Union is to be known forthwith as the Secretary General of the Organization, and the Assistant Director General becomes Assistant Secretary General.

The Specialized Conferences and Organizations

The Specialized Conferences of the new Organization deal with special technical matters not appropriate to a general conference; but in other respects their authority is the same as that of the regular conference, in that the delegates to these Specialized Conferences have, within their more

¹¹ The close coöperation of these three councils with the Pan American Union is secured by a provision that the heads of the corresponding departments of the Pan American Union are to be the executive secretaries of the respective councils (Article 88).

¹² The confusion previously existing between the Union of American Republics and its administrative bureau, the Pan American Union, is now avoided; but it may be some time before the Pan American Union, as General Secretariat of the new "Organization," ceases to be taken for the Organization itself.

limited field, the same full powers given to the delegates to regular conferences.

The Specialized Organizations are the various inter-governmental organizations established by multilateral agreements and having specific functions with respect to technical matters of common interest to the American states. An important provision of the Charter contemplates agreements between the Council and the Specialized Organizations in accordance with which the relations shall be determined between the particular agency and the Organization. In general, the relationship between the Specialized Organizations and the Organization of American States is comparable to the relation of the Specialized Agencies and the United Nations, in accordance with Article 57 of the Charter of the United Nations.

The Pacific Settlement of Disputes

The need of coördinating the wide variety of agreements between the American States for the pacific settlement of international disputes has long been recognized. The Conference had before it a draft submitted by the Inter-American Juridical Committee, prepared in accordance with a resolution adopted at the Conference held at Mexico City in 1945. This draft set forth first the general obligation to submit all controversies to some form of pacific settlement and then, in succession, the various forms of pacific settlement to which recourse might be had under the circumstances indicated. Article 17, dealing with the procedure of arbitration, laid down a practically absolute rule, that all disputes of whatever nature, juridical and non-juridical alike, which in the opinion of one of the parties could not be settled by the procedures of mediation, investigation, conciliation or arbitration must, of obligation, be submitted to arbitration. An exception was made of questions relating essentially to the domestic jurisdiction of a state; but lest this exception be used as a loophole to escape from the obligation, the provision was made that a difference of opinion upon this preliminary issue must be submitted to arbitration or to judicial settlement.¹⁸

Committee III of the Conference, which dealt with the subject, decided, in spite of the opposition of the United States delegation, to adhere to the

¹⁸ The draft presented by the Inter-American Juridical Committee in 1947 must be distinguished from an earlier draft prepared in 1945, which followed closely the procedures of pacific settlement set forth in the Charter of the United Nations. The draft of 1945 imposed an absolute obligation of pacific settlement, but left it to the states in controversy to agree upon the particular procedure, with the provision, however, that if they should fail to agree recourse should be had to a meeting of consultation of Foreign Ministers to assist them in agreeing upon a procedure and, if necessary, to determine a procedure. This "flexible" system was abandoned by the Juridical Committee in 1947 in favor of the more rigid procedure of compulsory arbitration in the event that either of the parties should find that none of the other procedures were satisfactory.

designation of a specific procedure for the settlement of political as well as juridical disputes, but it substituted for the arbitral procedure fixed by the Juridical Committee the procedure of recourse to the International Court at the Hague. The treaty further provides if the International Court of Justice should decide that it is without jurisdiction because of the domestic character of the controversy, or because the matter has already been decided or provided for, or because it involves the claims of aliens who have available the means to place their case before competent domestic courts, the controversy shall be declared ended. If, on the other hand, the International Court should for other reasons declare itself to be without jurisdiction, the controversy shall be submitted to arbitration in accordance with the provisions of the treaty relating to that procedure.

Due warning was given in the Committee that the abandonment of the traditional distinction between legal and political questions and the submission of the latter to the International Court of Justice would lead to a series of reservations. The answer made to this objection was that in due time the reservations would be withdrawn, and that in the meantime the treaty would stand as evidence of the determination of the American States to settle all of their controversies by judicial procedures. Whether this position will prove to have been wisely taken remains to be seen. One factor contributing to the number of reservations actually made was the introduction into the treaty of a rule of substantive law with respect to the diplomatic interposition of states in behalf of their citizens in foreign countries. Article VII of the treaty obligates the contracting parties "not to make diplomatic representations in order to protect their nationals, or refer a controversy to a court of international jurisdiction for that purpose, when such nationals have had available the means to place their case before competent domestic courts of the respective state." While it was asserted by the proponents of the article that it represented nothing more than the established rule of the constitutions of all of their countries, the uncertainty as to the meaning of the Spanish text, "*hayan tenido expeditos los medios*," led to reservations not only on the ground of the presence of an article on substantive law in a treaty on procedures, but on the ground of the possible conflict of the article with the rules of diplomatic protection. The Argentine delegation found that the article ran counter to the tradition of their Supreme Law which provides for the protection of aliens "to the same extent as nationals"; while the United States delegation could not accept the article because it appeared to be contrary to "the rule of exhaustion of local remedies by aliens, as provided by international law."¹⁴

The treaty bears the title, "American Treaty on Pacific Settlement—The Pact of Bogotá."

¹⁴ The problem was the same as that referred to above in connection with the formulation of the fundamental rights and duties of states. See above, note 7. Is or is there not an international standard of justice which supersedes national legislation and the decisions of national courts in cases of alleged denial of justice?

The Economic Agreement

The most controversial problem before the Conference was the formulation of the treaty which bears the name of the "Economic Agreement of Bogotá." A resolution of the Conference of Rio de Janeiro of 1947 had called upon the Inter-American Economic and Social Council to prepare a basic draft agreement on economic coöperation, to be presented to the Bogotá Conference. The draft was duly prepared, accompanied by a report setting forth the points of view of the various governments, several of which entered reservations, suggesting the conflicting points of view that were to arise at the Conference.

The agreement finally reached at the Conference follows closely the basic draft prepared by the Economic and Social Council. Chapter I sets forth the principles by which the American States propose to be guided in their economic relations—individual and collective coöperation in facilitating access on equal terms to the trade, products and means of production that are needed for their industrial and general economic development. The United States delegation, however, found that it could not subscribe to the proposed policy of compensating for the disparity that may exist between the prices of raw materials and the prices of manufactured products by establishing the necessary balance between them, on the ground that the obligations it entailed could with difficulty be carried out, if at all.¹⁵

Chapter IV of the Agreement, dealing with private investments, gave rise to extended discussions. Secretary Marshall had announced in his keynote address that the United States would be unable to make government loans in sufficient amounts to meet the needs of a number of the American States; and he suggested that an effort be made to encourage private capital to replace the deficiencies. But the investment of private capital created at once the two-fold problem, on the one hand of assuring private capital of adequate protection against confiscation or unjust treatment, and on the other hand of assuring the foreign country that investments of foreign capital would not lead to restrictions upon their economic independence. It was the old problem of diplomatic protection presented in new form. Has the alien any rights other than those of the national? Is there an "international standard" of justice to which the government of the alien may appeal in case the justice of the local courts appears to be inadequate even though it may be shown that the alien gets the same treatment as the national? In other words, in case of a conflict between the two, does international law take precedence over constitutional law, or vice versa?

Articles 22, 24, and 25 register the compromise texts finally agreed upon; but the broad terms in which they are drafted indicate that the basic dis-

¹⁵ Reservation to the second paragraph of Article 3.

agreement was not disposed of. Again, as in the case of the Treaty on Pacific Settlement, the large number of reservations, some fifteen in all, entered by the various delegations makes the treaty of doubtful value. A number of the delegations insisted upon reaffirming the primacy of the national constitution and the national laws, apparently considering that the negative terms of Article 25 did not give adequate protection to their policy.¹⁶

The Political and Civil Rights of Women

Two formal conventions were adopted dealing with the status of women, the first, entitled "Inter-American Convention on the Granting of Political Rights to Women," providing "that the right to vote and to be elected to national office shall not be denied or abridged by reason of sex"; and the second, entitled "Inter-American Convention on the Granting of Civil Rights to Women," providing in equally concise terms that "The American States agree to grant to women the same civil rights that men enjoy." The United States abstained from signing the second convention due to the fact that under the Constitution of the United States the matter of the civil rights of women is reserved to the powers of the several states of the Union.¹⁷

Declaration of the Rights and Duties of Man

In addition to the treaties and conventions adopted by the Conference the Final Act contains a large number of resolutions, declarations and agreements, some of which are supplementary to the more formal agreements while others deal with separate and independent matters. Outstanding among the independent documents is the "American Declaration of the Rights and Duties of Man."¹⁸ This Declaration had its origin in a resolution of the Conference on Problems of War and Peace, held at Mexico City in 1945, in accordance with which two declarations, one on the rights and duties of states and the other on the international rights and duties of man, were to be prepared as annexes to the proposed charter of

¹⁶ Reservations or understandings were entered by the delegations of Ecuador, Mexico, Argentina, Uruguay, Guatemala, Cuba, Venezuela, and Honduras.

In view of the reservations to these and other articles of the Agreement, the representative of the United States on the Inter-American Economic and Social Council brought before the Council at its meeting on June 25, 1948, the question whether by further examination of the various reservations it might not be possible to eliminate or, at the least, to reduce and clarify the number and extent of the reservations.

¹⁷ The rights granted to women by the two conventions are included in the American Declaration of the Rights and Duties of Man, Article II, which proclaims that, "All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor."

¹⁸ Final Act, XXX.

the inter-American system. The first of the declarations, the draft of which was prepared by the Governing Board of the Pan American Union, was incorporated into the body of the Charter of the Organization of American States, as indicated above. The second declaration, the draft of which was prepared by the Inter-American Juridical Committee in 1945, and again in 1947 following the observations of the American Governments, was adopted in substance by the Conference, but does not appear as an annex to the Charter but as an independent instrument.

The "American Declaration of the Rights and Duties of Man," as it is called, sets forth in detail both the traditional political rights of man, such as have been embodied in the bills of rights of the American Constitutions from the beginning, and the newer social rights of man which reflect the more recent tendency to call upon the state for positive measures to promote economic and social security as a condition of the practical enjoyment of political rights. The two sets of rights are fundamentally different in character, and it might have been well if the Declaration had indicated more clearly the distinction between them, all the more so in that the tendency of today is to elaborate upon the social rights and to offer the action of the state in that field as a justification for the denial of the older political freedoms.

While Committee VI, which was in charge of the subject, could not agree upon provisions for the enforcement of the Declaration of the Rights and Duties of Man, it succeeded in securing the adoption by the Conference of a recommendation proclaiming that the protection of rights should be by a juridical organ and that "where internationally recognized rights were concerned, juridical protection, to be effective, should emanate from an international organ." The recommendation then calls upon the Inter-American Juridical Committee to prepare a draft statute providing for the creation of an Inter-American Court to guarantee the rights of man.¹⁹ Whether by the time the Tenth Conference meets at Caracas in 1953 the problem may not already have been solved by the United Nations remains to be seen.

Charter of Social Guarantees

Paralleling certain phases of the Declaration of the Rights and Duties of Man is the document bearing the title, "Inter-American Charter of Social Guarantees."²⁰ In spite of its name, suggesting a broader application, it is actually a "declaration of the social rights of workers;" and except for its opening chapter it has rather the character of a labor code than that of a body of fundamental principles. Successive chapters deal with individual and collective labor contracts, with wages, work periods, rest and

¹⁹ Final Act, XXXI.

²⁰ Final Act, XXIX.

vacations, child labor, the work of women, stability of employment, home work, the right of association, social security and welfare, and other related topics. The United States delegation voted against the adoption of the Charter chiefly on the ground that it dealt with matters which under the Constitution of the United States are reserved to the several States.²¹

Juridico-political matters

In the field of "juridico-political matters," set aside as a separate chapter of the program, two important agreements were adopted, the first directed primarily against communist activities in America and the second against European colonies and occupied territories in America. In respect to the first agreement the Conference had before it a project of the Government of Guatemala which had been presented to the Conference at Mexico City in 1945 and referred by it to the Inter-American Juridical Committee for an opinion. The project proposed that the American Republics should abstain from giving recognition to and maintaining relations with anti-democratic regimes, and in particular with those that might originate from a *coup d'état* against governments of a legally established democratic nature. The opinion of the Juridical Committee was adverse to its adoption, chiefly upon ground of the vagueness of the term "anti-democratic." But before the Conference could act upon the matter the City of Bogotá experienced a series of riots which led to the introduction of a resolution directed against the activities of international communism. This resolution was subsequently amended to include the activities of "any other totalitarian doctrine" incompatible with the concept of American freedom. The resolution (XXXII) begins with a denunciation of the political activity of international communism and of other totalitarian doctrines on the ground of "its anti-democratic nature and its interventionist tendency"; and after condemning the methods of every system tending to suppress political and civil rights and liberties the resolution pledges the American States to adopt the measures necessary to prevent activities directed by foreign governments tending to overthrow their institutions and to disturb their domestic peace by subversive propaganda or any other means.²²

Colonies and possessions of non-American Powers

The problem of the presence in the American Continent of colonies and possessions of non-American powers first became acute at the Meeting of

²¹ The United States delegation also considered the document to be more in the form of a labor code than of a charter of fundamental principles. It also argued that there should have been greater consultation with the International Labor Organization, in order to avoid a conflict with provisions of international labor conventions.

²² For a survey of resolutions previously adopted against subversive propaganda, see "Intervention by Way of Propaganda," this JOURNAL, Vol. 35 (1941), 626.

Foreign Ministers at Habana in 1940. It was an obvious corollary of the Monroe Doctrine that the United States would be opposed to the transfer of colonies or territories in America from one European State to another, and under the circumstances of the war then in progress it was clear that the opposition of the United States would be inflexible. The Act of Habana of 1940 registered the determination of the American States to prevent any such transfer and to anticipate the possibility of it by setting up, in case of the threat of a transfer, a provisional administration of the territories under an inter-American commission.²³

With the Act of Habana as a starting point the Government of Guatemala requested that the topic of European colonies in America be included in the program of the Conference, and a draft declaration was prepared reciting that the historical process of the emancipation of America would not be concluded "so long as there remain in the Continent regions subject to the status of colonies," and declaring: "That it is a just aspiration of the Republics of America that the status of colonies that subsists in the Continent be terminated." Committee VI, to which the project was entrusted, elaborated the statement with respect to the historical process of emancipation of America so as to read: "so long as there remain on the continent peoples and regions subject to a colonial regime, or territories occupied by non-American countries"; and it modified the broad terms of the Guatemalan project by recognizing that the *de facto* or *de jure* status of colonies, possessions, and dependent or occupied territories varied in each case, thus making it necessary to carry out studies on each of them in order to find a suitable solution in each case. While the declaration proclaims in equally strong terms, "that it is a just aspiration of the American Republics that colonialism and the occupation of American territories by extra-continental countries should be brought to an end," the resolution which accompanies it goes no further than to create an American Committee on Dependent Territories "to centralize the study of the problem of the existence of dependent and occupied territories in order to find an adequate solution to that question."²⁴

The Brazilian Delegation dissented, stating that while under other circumstances the draft declaration might have merited its support, it considered that an inter-American conference was "not an appropriate forum for debating a question that affects the interests of countries outside the continent." A distinction was drawn between European possessions that were the subject of litigation and those that were not, the Delegation pointing out that in the case of the former there were the accepted procedures of pacific settlement, while in the case of the latter there were the provisions of Article 73 of the Charter of the United Nations in accordance

²³ Declaration XX entitled, "Act of Habana Concerning the Provisional Administration of European Colonies and Possessions in the Americas."

²⁴ Final Act, XXXIII.

with which the powers responsible for administering non-self-governing territories assumed a sacred trust to govern them, and that the attainment of self-government on the part of these territories must be brought about through the General Assembly of the United Nations. The Delegation of the United States likewise declined to sign the resolution, without, however assigning reasons for its unwillingness to do so.

The Recognition of de facto Governments

In marked contrast with the project of the Government of Guatemala, calling for an agreement not to recognize anti-democratic governments, and especially those coming into power by a *coup d'état* against governments of a legally established democratic structure, was the project of the Government of Ecuador calling for the abolition of the recognition of *de facto* governments, first presented to the Conference at Mexico City in 1945. The project had been referred to the Inter-American Juridical Committee for study, and the Committee had been unable to agree upon a report, a number of the members favoring the formulation of specific rules governing recognition, but others unable to accept such rules lest they be interpreted in such a way as to appear to restrict the sovereign right of the state to change its governments at will.

When the subject came before Committee VI, the same conflict of opinion was manifest, the Mexican and other delegations proposing the formal adoption by the Conference of the Estrada Doctrine, while still others pointed out that the Estrada Doctrine would not solve the problem, but would merely make the continuance or the discontinuance of diplomatic relations amount in fact to recognition or non-recognition of a new *de facto* government. The Committee, being unable to reach an agreement upon the subject, proposed that the matter be referred to the new Inter-American Council of Jurists for study and report, and a resolution to that effect was adopted by the Conference.²⁵

On the whole the work of the Conference appears to be deserving of the highest commendation, considering the difficult problems presented to it and the trying circumstances under which it carried on its work.²⁶ Doubt-

²⁵ Final Act, XXXVI. The United States delegation, seeking to reconcile conflicting views, introduced a resolution declaring that the right of maintaining, suspending or renewing diplomatic relations with another government should not be exercised as a means of individually obtaining unjustified advantages under international law, and that the establishment or maintenance of diplomatic relations with a government did not imply any judgment upon the domestic policy of that government. The resolution was adopted in the form of a Declaration (XXXV), entitled "Exercise of the Right of Legation," without, however, effecting a solution of the conflict of opinion.

²⁶ Too much cannot be said in praise of the determination of the delegates to continue the Conference in spite of personal danger to themselves; and there is little doubt that their decision greatly aided the Colombian Government in restoring order. The attitude of the delegate of El Salvador, Ambassador Castro, was characteristic: "If all of the mechanism of the Conference should be destroyed we can still draft a treaty with pencil and paper."

less what made it possible to accomplish so much in the brief working-time at the disposal of the Conference was the fact that the committees of the Conference had before them in most cases draft projects prepared by the Governing Board of the Pan American Union and by the Inter-American Juridical Committee. The delegates showed, it is true, in some cases little respect for the drafts submitted to them. But this meant no more than that the delegates manifested a large degree of independence in acting upon the problems presented to them; and that even where they were acting under express instructions of their governments they could still use a degree of judgment with respect to the compromises that might be necessary to secure a mutually satisfactory agreement.

Criticism of the work of the Conference lies chiefly in respect to the time lost in addresses far exceeding the limits of well-regulated debate. The addresses in the plenary sessions were, as is usual with international assemblies, made more with an eye to home consumption than to their persuasive effect upon the delegates themselves; but taken as a whole they were of a high character, marking the dignity of the gathering and the importance of the work of the Conference. The same, however, cannot be said of the addresses made before the Steering Committee, where it would seem that restrictions could readily have been imposed in the interest of efficiency without sacrifice of the principle of equality that governed all phases of the debates. As it happened, the Steering Committee, sitting as a sort of Committee of the Whole after the disturbances of April 9, held numerous sessions which were practically equivalent to plenary sessions, but which were prolonged unnecessarily by addresses frequently running to an hour in length. But in this matter tradition is still strong, and the presiding officer must go warily lest even the slightest ground be given for a charge of impartiality. The principle of the equality of states is a sacred tradition that must be upheld at all costs, even that of loss of time for persons holding the high office of Foreign Minister.

THE BOGOTA CHARTER OF THE ORGANIZATION OF AMERICAN STATES

By JOSEF L. KUNZ

Of the Board of Editors

I

Contrary to most international organizations, the Inter-American System lacked, up to now, a treaty basis. It was based merely on resolutions. Among them the famous Resolution of April 14, 1890, which created the "International Union of the American Republics," has a particular character and importance. This resolution needed ratification which was given, but by the American governments only. By this ratification the American Republics bound themselves legally and consented to be bound for ten years—and still longer if nothing to the contrary was done—and consented to the making of modifications and amendments, concerning the organization, by majority vote. Generally resolutions of the International Conferences of American States and other such meetings constitute only recommendations and are not legally binding but resolutions concerning organization are legally binding at once on the basis of point 16 of the ratified Resolution of April 14, 1890;¹ the latter is, up to now, in a strictly legal sense, the Constitution, the fundamental norm, of the Inter-American System.²

The reasons why no treaty was adopted on this subject were several times discussed at Pan American Conferences. They were primarily pragmatic reasons, especially the wish to avoid the necessity of ratification of a treaty. Positive arguments also were made to the same effect: resolutions better fit the empirical character of Pan-America, they render its gradual development more practicable, make easier its revision, its adaptation to circumstances, its evolution according to the broadening of the Pan-American movement; Anglo-American examples, the British Constitution, the Common Law were cited to the same effect.

Yet already in 1910 the Director General of the Pan-American Union (PAU) proposed to base it on an international convention,³ a proposal

¹ Thus correctly Señor Berméjo (Argentina) in 1902 (*Actas y Documentos de la 2a Conferencia Pan Americana*, Mexico City, 1902, pp. 243-249).

² See Josef L. Kunz, "The Pan American Union," in *Iowa Law Review*, Vol. 31, No. 1 (November, 1945), pp. 58-89, at pp. 74-77.

³ Report of the Director to the fourth Pan American Conference, Washington, 1910. Also in *Cuarta Conferencia Internacional Americana*, Buenos Aires, 1910, pp. 12-80.

repeated in the Report to the Santiago Conference of 1923.⁴ Finally at the 6th Conference at Havana, in 1928, a Convention on the Pan-American Union was signed.⁵ But this Convention had never been ratified by all the members and had never come into force. Later developments made this Convention appear to be out of date.

The "International Union of American Republics" had been created in 1890 as an international administrative union, originally only for one, later for more, purposes, but always for purposes of non-political coöperation. The Havana Resolution of 1928⁶ specifically forbade the exercise of political functions by the Pan-American Union and its Governing Board. Yet out of humble beginnings, after a long period of non-political coöperation and after a period of serious crisis in the 'twenties, the Inter-American System has since 1933 grown immensely. It was no longer restricted to relations of the American Republics among themselves; it became more and more also a political organization.

The constant creation, shifting, and fading away of Pan-American organs—many only of temporary character—and their growing number and complexity, led to uncertainty, confusion, duplication, vague definition of competences, inadequate financial foundation, inefficiency and, in some cases, to an existence on paper only. There was, further, a complete lack of interrelation, coördination, integration, and centralization. The need for a complete reorganization made itself strongly felt in recent years.⁷

The Mexico City Conference of 1945 adopted Resolution IX⁸ on the reorganization, consolidation, and strengthening of the Inter-American System,⁹ to be carried out by the Bogota Conference. A special Committee of the Governing Board¹⁰ prepared the Project of the Organic Pact of the Inter-American System¹¹ which was, in a new version,¹² before the

⁴ *Informe a los gobiernos miembros de la Unión Pan Americana*, Washington, 1923.

⁵ *The International Conferences of American States, 1889-1928*, Washington, 1931, pp. 398-403.

⁶ The same, pp. 397-398.

⁷ See John P. Humphrey, *The Inter-American System*, Toronto, 1942. Margaret Ball, *The Problem of Inter-American Organisation*, Stanford, 1944. Ruth D. Masters, *Handbook of International Organisations in the Americas*, Washington, 1945 (further cited as Masters).

⁸ Final Act, pp. 44-48.

⁹ See this writer's Editorial Comment in this JOURNAL, Vol. 39, No. 3 (July, 1945), pp. 527-538.

¹⁰ See already the earlier *Report and Project of the Executive Committee on Post War Problems of the Governing Board: Pan American Post War Organisation*, PAU, Washington, 1944 (mim.), pp. 71.

¹¹ *Project of Organic Pact of the Inter-American System*, PAU, Washington, 1946 (mim.).

¹² *Project of Organic Pact of the Inter-American System*. Submitted to the Bogota Conference by resolution of the Governing Board of February 4, 1948, PAU, Washington, 1948 (mim.).

Bogota Conference.¹³ These projects also had to integrate the Inter-American System with the United Nations.¹⁴

Of the five topics on the agenda of the Bogota Conference¹⁵ the first two dealt directly with the problem of reorganization. The Bogota Conference, notwithstanding its tragic interruption, has in the main solved the problem before it.

The basic treaty on which the Inter-American System will rest from now on is known as the "Bogota Charter" (Carta de Bogota).¹⁶ The Inter-American System itself a name of recent date as compared with the, original "Union of American Republics" and the popular "Pan-America," will be officially called the "Organization of the American States" (OAS).¹⁷ The Bogota Charter consists of three Parts in eighteen chapters and 112 articles.

II

The first fundamental change, brought about by the Charter, consists in creating, at last, a treaty-basis for Pan-America. Art. 1 of the English text says that the American States "establish" in this Charter the International Organization that they have developed. But the word "establish" cannot have the sense of founding, as the word "consagran" in the equally authentic Spanish text clearly shows.

The fact that the OAS will now be treaty-based, ends, of course, the possibility of changes or modifications by mere resolutions. Such changes will have now to be brought about by an amendment procedure. Only an Inter-American Conference, specially convened for that purpose, can adopt amendments (Art. 111). Amendments will enter into force among the ratifying states when two-thirds of the signatory states have deposited their ratification, and with respect to the remaining states in the order of their deposit of ratification (Art. 109). This procedure is very different from the amendment procedure of the League of Nations (LN) or of the

¹³ On the Inter-American System, as it existed prior to the Bogota Conference and the changes envisaged see the extensive article by William Sanders, "Sovereignty and Interdependence in the New World," in *Department of State Bulletin*, Vol. XVIII, No. 449 (February 8, 1948), pp. 155-184.

¹⁴ See this writer's Editorial Comment in this JOURNAL, Vol. 39, No. 4 (October, 1945), pp. 758-767.

¹⁵ For excellent information on all the topics and for the corresponding documents see: *Handbook for Delegates to the 9th International Conference of American States*, PAU, Washington, 1947.

¹⁶ *Charter of the Organisation of the American States*, PAU, Washington, 1948 (mimeo.). Also printed in *Department of State Bulletin*, Vol. XVIII, No. 464 (May 23, 1948), pp. 666-673.

¹⁷ Res. I, adopted at the Bogota Conference (*Acta Final*, PAU, Washington, 1948 (mimeo.)), at p. 10), calls on the American States to take measures for making the Bogota Charter widely known. Res. XL (the same, p. 56) orders that the organs of the OAS immediately adopt the new nomenclature and the regimes established by the Charter.

United Nations (UN). It does not bind the states which have not consented, nor are they forced to leave the OAS. But if a far-reaching amendment has come into force, it may be difficult to retain the unamended Charter in operation with regard to the "remaining states."

As up to now the OAS has been a strictly regional or continental organization: only American states can be members. "All American states that ratify the present Charter are members of the Organization" (Art. 2). The Charter needs, of course, ratification, and the instruments of ratification have to be deposited with the PAU (Art. 108). It will enter into force with the deposit of ratification by two-thirds of the signatory states (Art. 109). Art. 2, concerning membership, is interesting. Up to now every American state was a member "as of right."¹⁸ But now ratification of the Charter is necessary. The question arises: what will be the legal position of the seven or less than seven American states which do not ratify or, at least, have not yet ratified the Charter? Art. 2 speaks of "all American states." Membership is, in consequence, open only to "states," that is, to sovereign states in the sense of international law, not to states of a federal Union,¹⁹ not to European colonies in the Americas.²⁰ But there is no restriction to the present signatory twenty-one American Republics. Art. 2 would allow Canada as an "American State"²¹ to become a member by ratification. "All" American states clearly includes sovereign states which may newly come into existence in the Americas.²² It is to be noted that there is no "admission" into the OAS. If an entity is a sovereign American state, it has a right to become a member by ratification. The Charter remains permanently open for signature, not merely for accession, by the American states.²³ Art. 3—an innovation—foresees membership for any new political entity that arises from the union of several member States, whereas the states that constitute the new entity lose their membership. One may think of a possible "Central American Republic."

Up to now each Republic was free to leave the Inter-American System at its pleasure. The Charter too, contrary to the dubious legal situation

¹⁸ Thus still the *Project of an Organic Pact of the Inter-American System*.

¹⁹ See the membership of the Ukraine and of Byelo-Russia in the UN.

²⁰ The Constitution adopted by the 12th Pan American Sanitary Conference (Caracas, January 12-24, 1947) for the Pan American Sanitary Organization gives membership by right to all "self-governing nations of the Western Hemisphere." But territories within the Western Hemisphere "which do not conduct their own international relations shall have the right to be represented and to participate in the Organization. The nature and extent of their rights and obligations shall be determined in each case by the Directing Council."

²¹ Contrary to the earlier formula "American Republic."

²² As an independent Puerto Rico. See the earlier cases of Cuba and Panama.

²³ This feature is taken from Art. 23 of the Rio Treaty of 1947.

in the UN,²⁴ gives a right of withdrawal by denunciation (Art. 112), but after two years notice and "after having fulfilled the obligations arising from the present Charter," a norm clearly taken from the LN Covenant.

III

The second great change brought about by the Bogota Charter is the reorganization and centralization of the OAS. This can already be seen in the shorter reformulation of the basic principles, in the preamble,²⁵ and Art. 4-31.

Art. 4 names as purposes of the OAS: the strengthening of the peace and security of the continent, the pacific settlement of Inter-American disputes, group action in the event of aggression, political and non-political coöperation, and promotion of Inter-American welfare.

Art. 5 states the basic principles: international law as the standard of conduct of states, respect for sovereignty and independence of states, faithful fulfillment of international obligations, good faith, effective exercise of representative democracy, condemnation of wars of aggression, individual and collective self-defense, peaceful settlement of disputes, social justice, economic coöperation, fundamental rights of the individual without any discrimination, respect of cultural values, and importance of education. These basic principles²⁶ contain nothing new and are taken from earlier Pan-American declarations and conventions.²⁷ From a legal point of view it must be said that these principles as such constitute only a program, not legally binding norms. They are general expressions of policy for erecting legal norms which shall contain concrete obligations and providing sanctions for their violation.

Arts. 6-19 contain the "fundamental rights and duties of states." The principal features: juridical equality, jurisdiction over citizens and aliens, inviolability of territory and strictest non-intervention are taken from the corresponding Montevideo-Convention of 1933. Interesting are the articles dealing with the recognition of states; further norms, concerning recognition of *de facto* governments, will have to follow. The Mexico

²⁴ See Hans Kelsen, "Withdrawal from the United Nations," in *The Western Political Quarterly*, March, 1948, pp. 29-43.

²⁵ The Charter is an intergovernmental treaty. The beginning: "In the name of their peoples" has political, but no juridical significance; it is a modern *phrase diplomatique* which seems on the way to replace the beginning: "In the name of the Holy Trinity" of earlier treaties.

²⁶ See earlier, *The Basic Principles of the Inter-American System* (Executive Committee on Post War Problems of the Governing Board), PAU, Washington, 1943.

²⁷ Especially from *Convention on the Rights and Duties of States*, Montevideo, 1933; *Declaration of Principles of Inter-American Solidarity and Coöperation*, Buenos Aires, 1936; *Protocol Relative to Non-intervention*, 1936; *Declaration of American Principles*, Lima, 1938; *Declaration of Lima*, 1938; and declarations of the three Consultative Meetings of 1939, 1940, and 1942; finally from the Rio Treaty, 1947.

City Conference of 1945 had charged the Governing Board not only to prepare a declaration of the rights and duties of states, but also to include a "Declaration of Rights and Duties of Man," the text of which was to be formulated by the Inter-American Juridical Committee. This "Declaration" has now been adopted in Resolution XXX²⁸ of the Bogota Conference. It is of particular interest that Resolution XXXI²⁹ charges the Inter-American Juridical Committee to prepare a Statute for an Inter-American Court for the Protection of the Rights of Man; this Statute shall be submitted to the 10th Inter-American Conference "for deliberation."

Arts. 20-23 contain the fundamental norms for the pacific settlement of disputes. The urgent necessity of a complete reorganization of the Inter-American peace machinery had been strongly felt for a long time. The Mexico City Conference of 1945 recommended in Resolution XXXIX the immediate elaboration by the Inter-American Juridical Committee of a project of an "Inter-American Peace System."³⁰ Art. 23 of the Charter refers to a special treaty which was concluded at the 9th Inter-American Conference and will be known as the "Pact of Bogota."³¹

Arts. 24-25 give the basic principles on collective security, as laid down by the Rio Treaty of 1947.³²

Arts. 26-27 contain the basic principles concerning economic standards as they were developed especially since 1936. The Conference adopted also the "Economic Convention of Bogota."³³ As legally interesting we quote Art. 8 of this Convention which forbids the application of coercive means of an economic and political character in order to force the sovereign will of another state, and Art. 25, which prescribes the payment of prompt, adequate and effective indemnity in case of expropriation, an issue which was so prominent at the occasion of the Mexican expropriations.³⁴ Resolution VIII³⁵ of the Bogota Conference convokes a specialized Inter-American Economic Conference for the end of 1948 to Buenos Aires.

²⁸ *Acta Final*, pp. 41-49.

²⁹ The same, p. 49.

³⁰ See *Project of Inter-American Peace System*, PAU, Washington, 1948 (mime.), and *Report on the provisions of the Project of Inter-American Peace System, relative to obligatory arbitration*, PAU, Washington, 1948 (mime.).

³¹ *IXa Conferencia Internacional Americana, Tratado Americano de soluciones pacificas, Pacto de Bogotá*, PAU, Washington, 1948 (mime.). With the coming into force of the Pact of Bogota, all earlier peace instruments will cease to be in force including the Gondra Treaty (1923), Washington Treaties of Conciliation and Arbitration (1929), Additional Protocol on Conciliation (1933), Anti-War Treaty (1933), and the corresponding treaties of Buenos Aires (1936). Here, too, we see simplification, unification and centralization.

³² See this writer's Editorial Comment in this JOURNAL, Vol. 42, No. 1 (January, 1948), pp. 111-120.

³³ *IXa Conferencia Internacional Americana, Convenio Económico de Bogotá*, PAU, Washington, 1948 (mime.).

³⁴ See Josef L. Kunz, *The Mexican Expropriations*, New York, 1940.

³⁵ *Acta Final*, pp. 14-15.

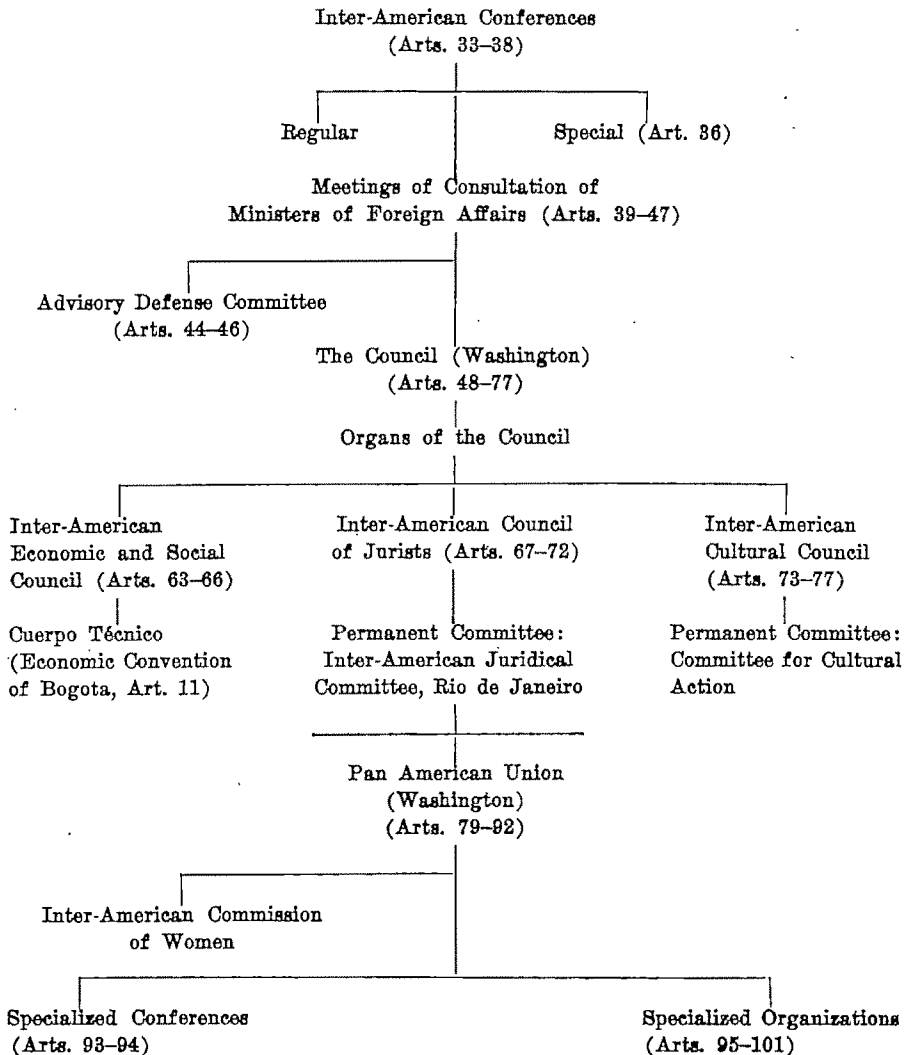
Arts. 28-29 contain the basic principles concerning social³⁶ and Arts. 30-31, concerning cultural standards.

IV

The Bogota Charter carries out the complete reorganization with which the Mexico City Conference had charged it; Resolution IX, 1945, gave some specific instructions, but also a sweeping authority to create or confirm the various organs, to create new or to adapt or eliminate old ones.³⁷

³⁶ See also Res. XXIX (*Acta Final*, pp. 33-40), containing the International American Charter of Social Guarantees; Res. XX (pp. 22-24), concerning services of social assistance; Res. XIX (pp. 21-22), on conditions of work; and Res. XXII (pp. 29-30), on the economic condition of women workers.

³⁷ This is the table of organs of the OAS under the Bogota Charter.



(1) *The supreme organ*, as up to now, is the *Inter-American Conference* (formerly International Conference of American States). It decides upon the general action and policy of the OAS, determines the structure and functions of its organs, and has the authority to consider any matter relating to friendly relations among the American states (Art. 33). It shall convene every five years (Art. 35). The system of rotation remains in force; each Conference fixes the place of meeting of the next Conference (Art. 36). In addition, there are special Inter-American Conferences³⁸ which may be held in special circumstances and with the approval of two-thirds of the American governments. These special conferences must be carefully distinguished from the Specialized Conferences which deal only with certain technical matters.

All Member States have the right to be represented at the Inter-American Conferences (Art. 34). This seems to reestablish the legal rule that the right to be represented does not depend on whether the *de facto* government of a Member State is or is not recognized at the time in question. According to the equality principle of the OAS, each state has the right to one vote (Art. 34). While an effort is always made to reach unanimity, it seems that resolutions can be taken with a simple majority vote, except where otherwise provided,³⁹ but the Charter contains no express norm. Another *lacuna* of great importance is that the Charter contains nothing about the controversial question of the legal nature of resolutions.

While the Inter-American Conference is the supreme organ of the OAS, it is a diplomatic conference; true, a diplomatic conference as an organ within the framework of a Constitution, but by no means a parliament or a legislative organ.

(2) *The Meeting of Consultation of Ministers of Foreign Affairs*, envisaged by the Buenos Aires Conference of 1936, and made an institution by the Lima Conference of 1938, is to be held in order to consider problems of an urgent nature and of common interest to the American states (Art. 39). As already laid down by Resolution IX of the Mexico City Conference of 1945, they are regular organs with particular competences, clearly distinguished from regular as well as special Inter-American Conferences; they are emergency meetings. But whereas Resolution IX of 1945 recognized ordinary meetings, to be held annually—except in years of an Inter-American Conference—and extraordinary meetings, the ordi-

³⁸ Up to now Buenos Aires (1936), Mexico City (1945), Rio de Janeiro (1947).

³⁹ A two-thirds majority is required: (a) of the governments: (1) for the coming into force of the Bogota Charter (Art. 109); (2) for the coming into force of amendments (Art. 111); (3) for the convocation of a special Inter-American Conference (Art. 36); (4) for the convocation of the Advisory Defense Committee (Art. 47); (b) of the Organ of Consultation under Art. 17 of the Rio Treaty of 1947; (c) of the Council: (1) for approval of decisions on budgetary matters (Art. 54); (2) for removal of the Secretary General or Assistant Secretary General (Art. 87).

nary meetings have now been dropped. The calling of a Meeting may be requested by any Member State and the Meeting will be held if the Council so decides by an absolute majority (Art. 40). On the other hand the Meetings now have a new function, namely as an Organ of Consultation under Art. 11 of the Rio Treaty of 1947 (Art. 43). But there is an interesting discrepancy, unsolved, between Art. 43 of the Charter and Art. 11 of the Rio Treaty, as the latter foresees a different organ, namely the Meeting of Foreign Ministers of the American Republics which have ratified the Rio Treaty. Let us hope that all the twenty-one Republics will ratify the Charter and the Rio Treaty; then the legal discrepancy will be of no importance practically.

The Meetings, in their capacity as Organs of Consultation, have at their disposal the Advisory Defense Committee (Arts. 44-47). The Inter-American Defense Board⁴⁰ had been created by the Rio de Janeiro Meeting of 1942 as a temporary organ and was sitting in Washington. Resolution IV of the Mexico City Conference of 1945 recommended the prompt establishment of a Permanent Military Organization. The Project of an Organic Pact of the Inter-American System had foreseen an "Inter-American Defense Council" as one of the four dependent organs of the Governing Board. But at Bogota objections of sovereignty were made against putting this organ under the Council and it was put directly under the Meetings of Consultation of Foreign Ministers.

The new Advisory Defense Committee is to be established to advise the Organs of Consultation on problems of military coöperation, in connection with collective security (Art. 44), and to be convoked under the same conditions as the Organ of Consultation (Art. 46). But it is also to meet when the Conference or the Meeting or the governments, by a two-thirds majority, assign to it technical studies or reports on specific subjects (Art. 47). In the meantime the Inter-American Defense Board will continue to work, until the American governments, by a two-thirds majority, resolve to end its work.⁴¹

(3) *The Council.* Here the Bogota Charter has created a far-reaching innovation, not only with regard to the law as it existed up to now, but also with regard to the proposed Organic Pact. The Governing Board had only been the Governing Board of the PAU. But the Council, as this organ is now called, is the Council of the OAS,⁴² a central organ with wide competence. To a certain extent it has the position of the LN Council, but with far more restricted competence. It does not correspond to

⁴⁰ See Masters, pp. 123-126.

⁴¹ Res. XXXIV, *Acta Final*, p. 58.

⁴² Whereas Humphrey (work quoted above, n. 7, p. 199) could write in 1942 that the "Union of American Republics is a purely theoretical body without constitution or officers," the OAS is now treaty-based and all Inter-American organs are organs of the OAS.

the Security Council of the UN, as the functions of the latter are, to a certain extent, exercised by the Organ of Consultation. On the other hand, it is superior to the other UN Councils.

The composition of the Council (Arts. 48-49) which functions in Washington (Art. 56), remains the same as that of the former Governing Board, as reorganized by Resolution IX, point 3, of the Mexico City Conference of 1945.

The powers and duties of the Council are: (a) to be responsible for the proper performance of the duties assigned to the PAU (Art. 51); (b) to draft its own regulations (Art. 55); (c) to establish the bases for fixing the quotas of contributions (Art. 54); (d) to fix the time for the Inter-American Conferences (Art. 35); (e) to prepare the programs and regulations of the Inter-American Conferences (Art. 38) and of the Meetings of Consultation (Art. 40); (f) to decide by simple majority whether a Meeting of Consultation should be held (Art. 40); (g) the Chairman of the Council immediately calls a Meeting of Consultation in case of an armed attack within the region of security, defined by Art. 4 of the Rio Treaty of 1947 (Art. 43); (h) to serve provisionally as Organ of Consultation, in accordance with Art. 12 of the Rio Treaty of 1947 (Art. 52); (i) under a general clause the Council takes cognizance—within the limits of the Charter and of Inter-American treaties and agreements—of any matter referred to it by Inter-American Conferences or Meetings of Consultation (Art. 50); (j) the Council has the final decision concerning studies to be prepared by the Committee for Cultural Action (Art. 77); (k) the Council elects the Secretary General (Art. 79) and the Assistant Secretary General (Art. 85); the Council may, by a two-thirds majority vote of its members, remove the Secretary General or the Assistant Secretary General (Art. 87); (m) the Council lays down the general standards as to the officers of the PAU, their powers and duties, and their compensation (Art. 84, b); (n) the Assistant Secretary General is the Secretary of the Council (Art. 86); (o) the Council has important functions with regard to specialized Conferences and specialized Organizations (Art. 53).

The Council thus has far-reaching competences, also of a political character. But the latter, dubiously framed at the Mexico City Conference of 1945, remain restricted.

The Council has three organs (Art. 57), which have technical autonomy within the limits of the Charter (Art. 58). They are composed of representatives of all the Member States of the OAS (Art. 59). They are to render to the governments, as far as possible, such technical services as the latter request and to advise the Council (Art. 60). The Council is, with the advice of the appropriate bodies and after consultation with the governments, to draft the statutes of such of its organs as are in process of formation (Art. 62).

These three organs are:

a. *The Inter-American Economic and Social Council* at Washington (Arts. 63-66). The Panama Meeting of Consultation of 1939 had created the temporary Inter-American Financial and Economic Advisory Committee.⁴³ Resolution IX, point 7, of 1945 substituted a permanent Inter-American Economic and Social Council subsidiary to the Governing Board, as the coördinating agency for all official Inter-American economic and social activities, and authorized the Board to organize this Council provisionally. It is now to be organized permanently. Under Art. 11 of the Economic Convention of Bogota, this Council is to organize a Permanent Technical Body.

b. *The Inter-American Council of Jurists* (Arts. 67-72).⁴⁴ This body is to serve as an advisory body in juridical matters and to promote the development and codification of public and private international law and to study the possibility of making uniform the laws of the American countries (Art. 67). This Council replaces the multitude of hitherto existing and ineffective codification agencies.⁴⁵ The Inter-American Juridical Committee,⁴⁶ originally created as the Inter-American Neutrality Committee by the Consultative Meeting of Panama, 1939, and re-baptized by the Consultative Meeting of Rio de Janeiro, 1942, is the permanent Committee of the Inter-American Council of Jurists (Art. 68). As hitherto, it will be an organ composed not of representatives of all of the American Republics but only of some of them but representing all the Member States of the OAS. The number of members and their method of appointment is changed. Instead of seven, it will be composed of jurists of nine countries. The selection is to be made by the Inter-American Council of Jurists from a panel submitted by each of the countries chosen by the Conferences (Art. 69). The Juridical Committee is to undertake such studies and preparatory work as are assigned to it by the Inter-American Conferences, the Meetings of Consultation or the Council and may also undertake studies and projects on its own initiative (Art. 70). As long as the reorganization is not carried out, the Inter-American Juridical Committee will continue to function in its actual organization.⁴⁷

c. *The Inter-American Cultural Council* (Arts. 73-77), a new organ. It is the central organ for promoting education, scientific and cultural ex-

⁴³ See Masters, pp. 139-146.

⁴⁴ See *Report of the Committee on the Organization of the Inter-American System relative to the establishment of an Inter-American Council of Jurists*, approved by the Governing Board, December 4, 1947.

⁴⁵ See *Inter-American Agencios for the Codification, Unification and Uniformity of Law in the Americas*, 5th ed., January, 1944, PAU, Washington (mimeo.).

⁴⁶ Masters, pp. 163-169.

⁴⁷ Res. II, *Acta Final*, pp. 10-11.

change and friendly relations and mutual understanding.⁴⁸ The Committee of Cultural Action, composed of members of five states, selected by the Council from a panel submitted by each country chosen by the Conferences, will act as the permanent Committee of the Council.

(4) *The Pan American Union*⁴⁹ (Arts. 78-92), at Washington (Art. 92), is the central permanent organ of the OAS and its General Secretariat (Art. 78). The title of the two leading officers is now Secretary General and Assistant Secretary General. The first is elected by the Council for a ten-year term, may not be reelected or succeeded by a person of the same nationality (Art. 79). He directs the PAU and is the legal representative thereof (Art. 80). He participates with voice but without vote, at all types of Inter-American conferences, at the meetings of the Council and its organs (Art. 81). The PAU will, as up to now, be organized into technical and information offices (Art. 82). These will be established, with the approval of the Council, by the Secretary General, who also appoints the necessary officers, regulates their powers and duties and fixes their compensation (Art. 84). The Assistant Secretary General is elected by the Council for a ten-year term and is eligible for reelection (Art. 85); he is the Secretary of the Council and serves as advisory officer to the Secretary General (Art. 86). Both leading officers may, whenever the proper functioning of the OAS so demands, be removed by the Council by a two-thirds vote of its members (Art. 87). The present functionaries who have to take the new titles are confirmed in their appointments.⁵⁰

The functions of the PAU (Art. 83) remain essentially the same.

It is definitely made the custodian of the documents and archives of the Inter-American Conferences and Meetings of Consultation and serves as a depository of ratifications of Inter-American agreements. The chiefs of the respective departments of the PAU are Executive Secretaries of the three organs of the Council (Art. 88).

(5) *General Norms*. The OAS is to enjoy in the territory of each member such legal capacity, privileges, and immunities as are necessary for the exercise of its functions and the accomplishment of its purposes (Art. 103). The representatives of the governments on the Council, and on the organs of the Council, the Secretary General and the Assistant Secretary General, are to enjoy the privileges and immunities necessary for the independent exercise of their duties (Art. 104). Correspondence of the OAS—not only of the PAU—when bearing the frank thereof, shall be carried post-free in the mails of the Member States (Art. 106). The representatives in the Conference, the Meeting of Consultation, and the Council are diplomatic

⁴⁸ See Res. XXIV (*Acta Final*, pp. 30-31) on the program and activities of the Cultural Council.

⁴⁹ See Josef L. Kunz in *Iowa Law Review*, Vol. 31, No. 1 (November, 1945), pp. 58-89.

⁵⁰ Res. XLI (*Acta Final*, p. 57).

representatives, appointed by their governments; all Member States are represented. The members of the organs of the Council and their permanent Committees, as well as of the Advisory Defense Committee, are composed of specialized delegates appointed by the governments; here, too every Member State is represented. The Inter-American Juridical Committee and the Committee for Cultural Action are committees of experts, selected by Inter-American organs, and are composed only of men of nine or five American Republics, but representing all of them. Men and women are equally eligible to participate in the activities of the various organs and hold positions therein (Art. 107).

The officers of the PAU are strictly international officials; in the performance of their duties they may not seek or receive instructions from any government or from any other authority outside the PAU. They must refrain from any action that might reflect upon their position as international officials responsible only to the Union (Art. 89). The Member States pledge themselves to respect the exclusively international character of the staff and not to seek to influence them in the discharge of their duties (Art. 90). While efficiency, competence, and probity are primarily to determine the selection of the personnel of the PAU, importance is to be given to recruiting personnel on as broad a geographical basis as possible (Art. 91).

(6) *Financing.* The financing of international organizations is of fundamental importance for their effective and successful functioning. Up to now the financing of the PAU has been entirely inadequate. Under so small a budget the PAU is hampered in many ways; it does not have enough competent officials, it is scandalously limited in its publications. Point 12 of Resolution IX of the Mexico City Conference of 1945 charged the Governing Board also to include the problem of financing in its proposals. Two main problems must be solved: adequate financing and just distribution of quotas among the Member States. The Governing Board submitted to the Bogota Conference a Report on the plan of financing.⁵¹ The Bogota Charter gives the competence to fix the quotas of each government to the Council. The budget must be approved by the Council and transmitted to the governments at least six months before the first day of the fiscal year. Decisions on budgetary matters require the approval of two-thirds of the members of the Council (Art. 54). The budget includes the costs of the PAU, of the Council, of the Organs of the Council and of the Secretariat of the Inter-American Defense Board.⁵² The Bogota Conference charged the Council to develop the continued technical perfection of the bases of financing the PAU, in order to guarantee an equitable reparti-

⁵¹ *Informe sobre el plan de financiación de la Unión Pan Americana y los organismos especializados*, PAU, Washington, 1948 (mimeo.). The budget of the PAU for the fiscal year of 1948-49, as prepared by the Director General, was \$2,180,000.

⁵² Res. VII (*Acta Final*, pp. 13-14).

tion.⁵³ In fixing the quotas the Council has under Art. 54 to take into consideration two factors: first, the capacity to pay of each country, and, second, "the willingness of each country to contribute a fair share." This last phrase must be severely criticized. To contribute a fair share is a strictly legal duty of the members of an international organization not a matter of grace or discretion. Contrary to the UN Charter⁵⁴ the Bogota Charter provides no sanctions for the non-fulfillment of the financial obligations of the members.

V

(7) *Specialized Conferences* (Arts. 93, 94). Among the hundreds of Inter-American "Technical Conferences,"⁵⁵ as they have been called up to now, we must distinguish strictly between three different types: official (intergovernmental), semi-official, and private. It is clear that private Inter-American specialized conferences are no part of the OAS. But official conferences also were often in little or no contact with the PAU. They were often convoked by single governments, in consequence of a resolution of an Inter-American Conference, or of a resolution of a previous technical conference, or on the initiative of a government. The matter of their regulations was often left entirely to them. Their Proceedings are sometimes extremely difficult to obtain, if available at all. Some of these technical conferences meet only once, others have become periodic. Here, too, the Bogota Charter seeks to introduce order, centralization, relation with the Council and the PAU.

The Specialized Conferences meet to deal with special technical matters; but, from now on, they are to be clearly connected with the OAS and its central organs. They meet (a) when it is so decided by the Inter-American Conferences or the Meetings of Consultation; (b) when Inter-American agreements so provide; (c) when the Council considers it necessary, either on its own initiative or at the request of one of its organs or at the request of one of the Specialized Organizations (Art. 93). Their programs and regulations are to be prepared by the Organs of the Council or by the specialized agencies concerned and shall be transmitted to the Council for its information (Art. 94). The Secretary General of the PAU participates with voice, but without vote, also at the Specialized Conferences (Art. 81). The PAU is, in so far as possible, also the custodian of the documents and archives of the Specialized Conferences (Art. 83, d). The Bogota Conference has resolved to call two specialized conferences: the Inter-American

⁵³ Res. VI (*Acta Final*, p. 13).

⁵⁴ Art. 19.

⁵⁵ *The International Conferences of American States, First Supplement, 1933-1940*, Washington, 1940, Appendix A, pp. 381-452.

Economic Conference,⁵⁶ already mentioned, and the Inter-American Conference for the conservation of renewable natural resources.⁵⁷

Some of the specialized conferences stand by themselves; others create specialized organizations, others are the general conferences of existing specialized organizations.

(8) *Specialized Organizations* (Arts. 95-101). The Mexico City Conference of 1945 had specifically charged the Governing Board "to provide for the strengthening of the Inter-American System by the creation of new organs or the elimination or adaptation of existing organs, dovetailing their functions between the several agencies and with the world organization."

The Governing Board has, by resolution of October 20, 1947, submitted a special Report on Specialized Inter-American Organizations⁵⁸ to the Bogota Conference. The Bogota Charter merely lays down general norms. It has made a necessary clear-cut distinction between inter-governmental, semi-official and private organization. It is clear that the private (unofficial) Inter-American organizations⁵⁹ do not and cannot form a part of the OAS. That says, of course, nothing against their importance or the advisability of collaboration and close relations with them. As the Report, adopted on October 20, 1947, states: "Such organizations may be very useful in contributing to the carrying out of the purposes of the Inter-American System" and "the Council might be authorized to enter into agreements with these bodies." Art. 53, d makes it the duty of the Council "to conclude agreements or special arrangements for coöperation with other American organizations of recognized international standing." Such coöperation is even prescribed with national organizations.⁶⁰

The semi-official organizations have a membership, partly official and partly private; some are also supported partly by official and partly by private funds. There is no uniformity in their organization and structure. Art. 53, d applies here too. The most important organizations of this type are: (1) The Inter-American Statistical Institute,⁶¹ which had already ex-

⁵⁶ Res. VIII (*Acta Final*, pp. 14-15).

⁵⁷ Res. IX (*Acta Final*, pp. 15-16).

⁵⁸ PAU, Washington, 1947 (mim.).

⁵⁹ See the American Institute of International Law, the Inter-American Bar Association, the Association of American Writers and Artists (Havana), the Inter-American Bibliographical and Library Association (Washington), the Inter-American Commercial Arbitration Commission (New York), the International Institute of Ibero-American Literature, the Pan American Institute of Mining Engineering and Geology (Santiago, Chile), the Pan American Medical Association (New York) and many others.

⁶⁰ Art. 71: "The Inter-American Council of Jurists and the Juridical Committee should seek to obtain the cooperation of national committees for the codification of international law, institutes of international and comparative law," Res. XXIV (*Acta Final*, p. 30), provides: *Colaboración con las comisiones nacionales de cooperación intelectual y con otros organismos culturales nacionales.*

⁶¹ Organized in 1940 during the sessions of the 8th American Scientific Congress (Masters, pp. 177-181; *Report*, quoted above, n. 58, pp. 28-30).

pressed a desire for closer affiliation with the PAU. Resolution IV⁶² recommends that the Council examine the possibility of a special agreement, establishing relations between the OAS and the Institute, including the bases of financing. (2) The Pan American Coffee Bureau, New York,⁶³ with which the Council may also conclude an agreement for coöperative relationship. (3) Pan American Commission of Inter-Municipal Coöperation, Havana,⁶⁴ which itself has proposed closer relations with the PAU. (4) Pan American Congress of Railways, Permanent Commission, Buenos Aires,⁶⁵ and (5) Inter-American Development Commission, Washington,⁶⁶ an emergency creation of the Second World War. Its position in relation to the OAS has never been clearly defined. Its future position is now the object of a study of the Inter-American Economic and Social Council.

The Bogota Charter deals primarily with the official specialized organizations. They are "intergovernmental organizations established by multilateral agreements and having specific functions with respect to technical matters" (Art. 95). In determining their geographic location, the interests of all the American states are to be taken into account (Art. 101). Other norms provide for their integration into the OAS. The Council has the duty (Art. 53) to draft and submit to the governments and the Inter-American Conferences proposals for the creation of new specialized organizations or for the combination, adaptation, or elimination of existing ones; further, to draft recommendations to the governments, the Inter-American Conferences, the specialized conferences, or the specialized organizations, for the coördination of activities and programs of such organizations, after consultation with them; to conclude agreements with them and determine their relations with the OAS. The specialized organizations enjoy the fullest technical autonomy and are to take into account the recommendations of the Council (Art. 97). The Council is to maintain a Register of these Organizations (Art. 96). They are to submit to the Council periodic reports on the progress of their work (Art. 98).

The specialized organizations must be strictly distinguished from the Organs of the Council and the Advisory Defense Committee which are integral parts of the OAS. They supersede in certain cases hitherto existing specialized agencies.

The problem of financing the specialized organization is of great importance; the budgets of some of them are utterly inadequate. The Report

⁶² *Acta Final*, p. 12.

⁶³ Masters, pp. 287-291.

⁶⁴ Created by resolution of the First Pan American Congress of Municipalities (Havana, 1938), under a resolution of the 6th International Conference of American States (Masters, pp. 115-123).

⁶⁵ Organized originally in 1910 as the South American Congress of Railways and broadened in 1941 so as to include all the twenty-one American Republics.

⁶⁶ Originated in Res. XIII of January 15, 1940 of the Inter-American Financial and Economic Advisory Committee.

on financing of March 8, 1948,⁶⁷ dealt also with this problem. It considered the two possibilities, a single budget for the whole OAS and separate budgets. It inclined rather to the second solution, in view of the difference of those organizations and with regard to the fact that not all the twenty-one Republics participate in all of them. The Bogota Charter merely lays down that the Council may draft and submit proposals, including the financing and support of the specialized organizations (Art. 53, a). They must submit to the Council also periodic reports on their annual budgets and expenses (Art. 98). Agreements between them and the Council may provide that they transmit their budgets to the Council for approval; arrangements may be made for the PAU to receive the quotas of the contributing countries and distribute them in accordance with pertinent agreements (Art. 99).

The whole rearrangement of the specialized organizations has still to be made. Resolution VI⁶⁸ lays down that the Council open the Register, provided for in Art. 96, conclude the agreements (Art. 53) and make, as soon as possible, a complete examination of the situation and activities of the existing specialized organizations, in order to adopt, with the authorization of the governments, the necessary measures for the abolition of those the maintenance of which is not advisable, and for the strengthening, adaptation or fusion of the others.

In this impending reorganization, we may distinguish:⁶⁹

A. Specialized Organizations, now existing, which may be abolished. To these belong (a) in all probability, the Inter-American Trade Mark Bureau (Havana),⁷⁰ as the Protocol of 1929 has been denounced by all ratifying States except Cuba, as there is a lack of interest and no business to transact, and (b), probably, the Pan American Railway Committee.⁷¹

B. Existing Specialized Organizations which may be maintained. Their eventual reorganization can be done by resolution, if they have been created by resolution of International Conferences of American States, of Consultative Meetings, or of Technical Conferences. But others exist by virtue of conventions. Some are permanent, some temporary, some of an emergency character.

This group includes: (a) Emergency Advisory Committee for Political Defense, Montevideo;⁷² but it may be continued in view of the anti-Com-

⁶⁷ Work quoted above, n. 51.

⁶⁸ *Acta Final*, pp. 11-12.

⁶⁹ See the proposals in the *Report*, quoted above, n. 58.

⁷⁰ Established originally under the Trade Mark Convention of the 4th International Conference (1910), continued by the Convention of 1923 and the Protocol of 1929 (*Masters*, pp. 182-187).

⁷¹ Created originally in 1890 (*Masters*, pp. 320-324).

⁷² Established by a resolution of the Third Consultative Meeting, Rio de Janeiro, 1942; composed of seven members, appointed by seven of the American Republics

munist resolution adopted by the Bogota Conference.⁷³ (b) American International Institute for the Protection of Childhood, Montevideo;⁷⁴ it needs a greater budget; (c) Inter-American Coffee Board,⁷⁵ Washington, an agency created during the war emergency; (d) Inter-American Indian Institute,⁷⁶ Washington; (e) Inter-American Institute of Agricultural Sciences, Turrialba, Costa Rica⁷⁷ (f) Inter-American Telecommunications Office,⁷⁸ Havana; (g) Pan American Highway Congresses,⁷⁹ Buenos Aires; (h) Pan American Institute of Geography and History,⁸⁰ Mexico City; (i) Permanent American Aeronautical Commission;⁸¹ (j) Postal Union of the Americas and Spain, International Office,⁸² Montevideo; (k) Pan American Bureau of Eugenics and Homiculture,⁸³ Havana; (l) Pan American Sanitary Bureau,⁸⁴ Washington; (m) Inter-American Commission of Women,⁸⁵ Washington. Resolution XXIII of the Lima Conference, 1938 charged the Governing Board with a study of the Statute of the Commission. Resolution IX of the Mexico City Conference, 1945, provided specifically the inclusion of the Commission "among the organs which form the PAU."

designated by the Governing Board, but representing all the American Republics; in structure and function an unusual and very interesting organ. See its 1st Report, Montevideo, 1943. Second Annual Report, Montevideo, 1944. See Bulletin, PAU, 1942, p. 489, p. 693. J. F. Pimentel in *Revista de Derecho Internacional*, September, 1943, pp. 116-118; Carl B. Spaeth and W. Sanders in this JOURNAL, Vol. 38, No. 2 (April, 1944), pp. 218-241.

⁷³ Res. XXXII, *Acta Final*, pp. 49-50.

⁷⁴ Established in 1927 (Masters, pp. 8-12).

⁷⁵ Created pursuant to the Inter-American Coffee Agreement of 1941 (Masters, pp. 93-98).

⁷⁶ Established by terms of a convention, Mexico City, November 1, 1940 (Masters, pp. 150-156).

⁷⁷ Established in accordance with a convention of January 15, 1944.

⁷⁸ This office will supersede the Inter-American Radio Office (on it, Masters, pp. 170-175), when the Convention of September 27, 1945, signed at Rio de Janeiro, is ratified by five governments.

⁷⁹ The Report proposes the maintenance, but considers it desirable that the Central Committee be made more truly Inter-American in character.

⁸⁰ Established in 1929 (Masters, pp. 307-310).

⁸¹ Provided for in a resolution of the Inter-American Technical Aviation Conference, Lima, 1937 (Masters, pp. 357-359); hitherto inactive.

⁸² Established 1921. Members: the twenty-one American Republics, Canada and Spain, International Transfer Office in Panama City (Masters, pp. 379-389).

⁸³ Masters, pp. 35-36.

⁸⁴ Created by the Second International Conference of American States, 1902 (Masters, pp. 324-331). The 12th Pan American Sanitary Conference (Caracas, January 12-24, 1947) adopted a reorganization plan. The organization will consist of (a) the Pan American Sanitary Conferences, to be held every four years; (b) the Directing Council, meeting annually; (c) the Executive Committee and (d) the Pan American Sanitary Bureau in Washington (see article by James A. Doull in *Department of State Bulletin*, Vol. XVIII, No. 452 (February 29, 1948), pp. 283-285).

⁸⁵ Created by resolution of the 6th International Conference of American States, Havana, 1928 (Masters, pp. 106-110).

A Subcommittee of the Governing Board prepared the Organic Statute which the Governing Board adopted on February 4, 1948.⁸⁶ Resolution XXVIII of the Bogota Conference⁸⁷ approved the resolution of the Governing Board by which the Secretary General is authorized to organize the Secretariat of the Commission. Resolution XXI⁸⁸ adopted the Organic Statute of the Commission. Contrary to the proposal of the Governing Board of 1948, the Commission is not a specialized organization, but a permanent entity which functions attached to the Secretariat General of the OAS.⁸⁹

Will the Inter-American Commission for Territorial Administration,⁹⁰ which has never met, continue? If so, is it a specialized organization? The same question may be asked with regard to the newly created American Commission of Dependent Territories,⁹¹ to be established at Havana.

C. Specialized Organizations, newly to be created. The Bogota Conference has made recommendations (a) to include the Inter-American Institute of Musicology, Montevideo, in the study on the situation and activities of specialized organizations;⁹² (b) to charge the Inter-American Economic and Social Council to study the possibility and convenience of creating an Inter-American Institute of Immigration,⁹³ proposed by Peru; and (c) an Inter-American Institute of Commerce⁹⁴ and (d) an Inter-American Bank,⁹⁵ and eventually to revise the corresponding Convention of May 10, 1940. All these three studies and proposals shall be submitted to the Specialized Economic Conference, to be held at Buenos Aires.

VI

The third great change brought about by the Bogota Charter is to transform the OAS which had hitherto been an independent organization, independent particularly with reference to the LN, into a regional system within the UN and in conformity with the provisions of the UN Charter.⁹⁶ Already in the preamble of the Bogota Charter the principles and purposes of the UN are solemnly reaffirmed. Art. 1 declares expressly: "The OAS is a regional agency within the UN." Under Art. 4, the OAS has "to

⁸⁶ *Proyecto de Estatuto Orgánico de la Comisión Inter-Americana de Mujeres*, PAU, Washington, 1948 (mimeo.).

⁸⁷ *Acta Final*, p. 32.

⁸⁸ *Acta Final*, pp. 24-28.

⁸⁹ *Una entidad permanente que funciona adscrita a la Secretaría General* (Art. 1).

⁹⁰ Created by the Act of Havana, 1940 (*Masters*, pp. 103-106).

⁹¹ Res. XXXIII, *Acta Final*, pp. 51-52 (Reservation by Brazil; the United States abstained from approving this Resolution).

⁹² Res. V, *Acta Final*, p. 13.

⁹³ Res. XIV, the same, p. 19.

⁹⁴ Res. XVI, the same, p. 20.

⁹⁵ Res. XV, the same, p. 20.

⁹⁶ UN Charter, Arts. 52-54, 33, 37, 51.

fulfill its regional obligations under the Charter of the UN." No provisions of the Bogota Charter are to be construed as impairing the rights and obligations of the Member States under the Charter of the UN (Art. 102). The Bogota Charter is to be registered with the Secretariat of the UN through the PAU (Art. 110). The Council is to promote and facilitate collaboration between the OAS and the UN as well as between the Inter-American Specialized Organizations and similar international ones (Art. 53, e). The Organs of the Council shall establish coöperative relations with the corresponding organs of the UN (Art. 61). The Specialized Organizations shall establish coöperative relations with world agencies. Resolution X⁹⁷ provides for the division of functions between the Inter-American Economic and Social Council and the Latin-American Economic Commission of the UN, to avoid duplication. The Economic Convention of Bogota foresees coöperation with the UN Economic and Social Council, with the International Monetary Fund and the International Bank of Reconstruction. Resolution XXXIX⁹⁸ provides for the participation of the UN in the Inter-American Conferences and Meetings of Consultation and for the participation of UN organs in the Conferences of Inter-American Specialized Organizations.

Just as the complete reorganization of Inter-American Specialized Organizations and the creation of some organs which are integral parts of the OAS are still in the stage of formation, so the integration with the UN is also in a formative period. Such integration may take very different forms from mere coöperation via a relationship based on agreement until a form of collaboration so close as to lead to the performance of regional functions, as will be the case with the Pan American Sanitary Bureau with regard to the World Health Organization (WHO).

The Bogota Charter is also in its structural aspects deeply influenced by the UN Charter. Thus the names of the OAS, of the Council, of the Secretary General, the names and structures of the different Councils, the names of the Specialized Organizations, their position outside of the OAS, but to be "brought into relationship with the Organization," the formulas for defining the legal capacity of the OAS, and the privileges and immunities are under the strong influence of the UN Charter. On the other hand the differences are also pronounced. Somewhat different rules are established concerning privileges and immunities; there is only one Council; the other Councils are not coördinated as in the UN but are organs of the Council. There are even basic differences: absolute equality, sovereignty, non-intervention, no preferred position for any Member State, no veto, express right of withdrawal.

While the Bogota Charter transforms the OAS into a regional organization of the UN it takes good care, at the same time, to preserve its identity

⁹⁷ *Acta Final*, p. 16.

⁹⁸ *Acta Final*, pp. 55-56.

and relative independence. Thus Art. 20 prescribes that all Inter-American disputes shall be submitted to Inter-American peace procedures, before being referred to the Security Council of the UN; and as Art. 23 lays down that the special treaty on pacific settlement of disputes shall make provisos in such a manner that it will not be possible for an Inter-American dispute to fail of definitive settlement within a reasonable time, a submission to the Security Council of the UN can hardly arise. Thus Art. 100, in a particularly interesting way, states that "Inter-American Specialized Organizations, in concluding agreements with international agencies of a world-wide character, should preserve their identity and status as integral parts of the OAS, even when they perform regional functions of international agencies."

By incorporating the Rio Treaty of 1947, the OAS not only preserves its identity and relative independence, but transcends the UN, although remaining in full conformity with the UN Charter, by achieving "collective security," in spite of the UN veto. True, legally, this is not collective security, but a system of individual and collective self-defense, based on Art. 51 of the UN Charter.

VII

The Bogota Charter can, as a whole, be welcomed.⁹⁹ The drafting is, from the point of view of legal technique, generally good. There are a few important omissions, particularly as concerns the legal nature of resolutions of Inter-American Assemblies. It is also interesting to note that the Charter contains no norms on Pan-American sub-regional developments, such as Central America or the Inter-American Caribbean Union. As in the UN Charter, so in the Bogota Charter it would be appropriate to allow specifically such sub-regional organizations, conferences and organs, but, at the same time, to lay down guiding principles and rules to which such sub-regional developments must conform.

The Bogota Charter gives Pan-America a treaty basis and a Constitution, makes it a regional organization within the UN, strengthens it by the inclusion of the principles embodied in the Rio Treaty of 1947. With the Bogota Charter Pan-America's long period of a mere empirical evolution has, perhaps, come to an end. Pan-America has now reached a remarkable organization, more closely knitted, better organized than any other existing regional or continental organization. Yet, it does not constitute a real innovation in international law. It by no means leads to a super-government; in some respects it is more conservative than the UN. Pan-America, under the Bogota Charter, is a remarkable achievement, but

⁹⁹ See the remarks by Assistant Secretary for Political Affairs, Norman Armour, on the achievements of the Bogotá Conference *Department of State Bulletin*, Vol. XVIII, No. 465 (May 30, 1948), pp. 714-715.

basically, no more than a loose association of sovereign states, based on voluntary coöperation.

The Charter must, first of all, be ratified. It needs implementation, some already existent, such as the Rio Treaty, the Pact of Bogota, the Declaration of the Rights and Duties of Man. The reorganization, strengthening, or transformation has, to a great extent, still to be done. Much remains for the moment still in a stage of transition or formation. Thus some of the newly created organs of the Council and the Advisory Defense Committee are in formation or transformation. The whole reorganization of the Specialized Organizations has to be carried out.

Pan-America will, with the ratification of the Bogota Charter, have a Constitution. Such constitutional foundation is of the very greatest importance. But it is further necessary that the Constitution functions. For that purpose the faith in this Constitution by all the members, their willingness to coöperate, good neighborly relations between all the twenty-one American Republics, and between this country and Latin America, are indispensable. In the last analysis it is the spirit which decides.

JUSTICE AND LAW IN THE CHARTER OF THE UNITED NATIONS

BY MINTAUTS CHAKSTE *

The position of justice and law in the international society organized under the Charter of the United Nations seems to have become a matter of controversy among scholars commenting on the Charter. Conflicting views on this matter have been expressed, and they seem to obscure one of the very basic problems arising from the Charter of the United Nations. Professor Clyde Eagleton maintains that "the Security Council was not restricted to legal principles, solutions, and procedures; security was set above justice, and the establishment of order was to precede the reign of law."¹ Senator Henri Rolin, Delegate of Belgium to the San Francisco Conference, expressed a different view by saying that "with regard to peace, we felt the need to emphasize, that our first object was to be strong to maintain peace, to maintain peace by our common effort and at all costs, at all costs with one exception—not at the cost of justice."² Professor Alfaro, Delegate of Panama, seconded him. He stressed that "we will not maintain peace and security at the cost of justice; that is to say, sacrificing the rights of any nation."³

The discrepancy between the assertion that "security was set above justice" and the contention that peace and security will not be maintained at the cost of justice appears to be fundamental. It may be well explained by the fact that the Charter of the United Nations, before achieving its final form, passed through two different phases of development each governed by different ideas: the phase of the Dumbarton Oaks Conversations and the phase of the San Francisco Conference. And the approach to the problem of the position of law and justice under the regime established by the Charter of the United Nations is partly determined by the significance we are willing to attribute to the work of the San Francisco Conference by including amendments concerning law and justice into the original Dumbarton Oaks Proposals.

The document known as the Dumbarton Oaks Proposals was the product of an outspoken political "realism." Many writers on international law have already pointed out the fact that the Proposals were conspicuous by

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¹ This JOURNAL, Vol. 40 (1946), p. 513.

² *Documents of the United Nations Conference on International Organization, San Francisco, 1945*, Vol. 6, p. 13, cited hereinafter as *Documents*.

³ Same, pp. 26-27

the absence of references to the principles of justice and international law. The word "justice" was literally missing from the Proposals, and the words "international law" appeared only in a paragraph designed to protect national sovereignty against international law. But as soon as the Dumbarton Oaks Proposals were published a criticism of this omission became general even before the nations convened at San Francisco.

As a matter of fact, as early as the Chinese phase of the Dumbarton Oaks Conversations it became clear that concessions to the demands for the insertion into the document of due reference to the principles of justice and international law would have to be made. The Chinese Government put forward the following proposals:

(1) The Charter should provide specifically that adjustment or settlement of international disputes should be achieved with due regard for the principles of justice and international law.

(2) The Assembly should be responsible for initiating studies and making recommendations with respect to the development and revision of the rules and principles of international law.

These proposals were first accepted by the Governments of the United States, the United Kingdom and China. Later the Government of the Soviet Union joined in sponsoring them for presentation to the San Francisco Conference.⁴ They were inserted into the Amendments of the Governments of the United States, the United Kingdom, China, and the Soviet Union of May 5, 1945, proposed to the San Francisco Conference.⁵

But a most impressive criticism of the "realism" of the Dumbarton Oaks Proposals was made in the sixth plenary session of the San Francisco Conference by Field Marshal Smuts, Delegate of South Africa, in his inspiring appeal to proclaim in the Charter of the United Nations the faith of the United Nations in the peace of justice and honor and fair-dealing as between man and man, as between nation and nation.⁶ His was the initiative to include into the Charter the Preamble which was completely missing from the Dumbarton Proposals as proposed to the San Francisco Conference. The Preamble became an integral part of the Charter, conspicuous by its high idealism against the background of the realism of the Dumbarton Oaks Proposals.

As soon as the Delegates of the San Francisco Conference had to express their views on the "realism" of the Dumbarton Oaks Proposals, they were most anxious to find appropriate remedies to change the spirit of the Proposals. They pointed out that "stronger language than that set forth in Paragraph 1, Chapter I, of the Amendments proposed by the Four Sponsoring Powers was needed." They felt that "the phrase 'with due regard for the principles of justice and international law' in Paragraph 1, Chap-

⁴ *Documents*, Vol. 3, p. 25.

⁵ *Documents*, Vol. 3, p. 622.

⁶ *Documents*, Vol. 1, p. 426.

ter I, was not adequate. It was believed that a more explicit requirement for strict observance of the principles of justice, international law, and morality should be written into the declaration of Purposes in the Charter of the World Organization." Various delegations "concurred in the view that the original Dumbarton Oaks phraseology should be adhered to, but strengthened where necessary by more positive references to the obligation of strict observance of international law and justice by all states as prerequisite to the primary end of the Organization for maintaining peace and security."⁷

The remedies proposed by various delegations found their expression in a great many of amendments to the Dumbarton Oaks Proposals. The Delegate of Egypt, in supporting the amendment to Paragraph 1, Chapter I, by inserting the phrase that peace and security should be maintained in conformity with the principles of justice and international law, could point to the fact that out of twenty-three different sets of amendments submitted by different powers, nineteen included amendments cognate to that which he was supporting.⁸

If not all of the amendments were carried it was partly due to the rule for voting according to which a two-thirds majority was required for an amendment to be carried, and not to the lack of support by the majority of states. In fact in some cases a minority of states prevented the amendments of the majority from being inserted into the Charter. The fact, however, remains that behind the amendments of the original Dumbarton Oaks Proposals aiming at the strengthening of the position of law and justice in the Charter was a considerable force of states to which the "realism" of the original Dumbarton Oaks Proposals had to yield ground. As Mr. Malcolm W. Davis, referring to the insertion of the words "and justice" into Paragraph 3, Article 2, of the Charter, points out, "the apparently simple amendment was in reality the result of a steady struggle to put the principle of justice explicitly into these Charter articles together with peace and security."⁹ This steady struggle for the explicit insertion of the principle of justice in the Charter, which resulted in a success for its supporters, cannot be ignored when we turn to the intentions of the makers of the Charter as a means for a better understanding of the Charter. This struggle stresses the importance the majority of the makers of the Charter attributed to the principle of justice in the functions of the World Organization.

The final text of the Charter of the United Nations, compared with the original Dumbarton Oaks Proposals, contains express references to the principles of law and justice, which were completely missing from the

⁷ *Documents*, Vol. 6, p. 282.

⁸ Same, p. 23.

⁹ Malcolm W. Davis, "The United Nations Charter: Development and Text," *International Conciliation*, No. 413 (September, 1945), p. 445.

Proposals, and has attributed them a much more prominent position, as it would appear from a purely outward approach to the changes affected in the Proposals by the San Francisco Conference.

The first reference to these principles is made in the Preamble which declared that the Peoples of the United Nations are determined

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained.

Article 1, Paragraph 1 defines the first purpose of the United Nations as follows:

To maintain peace and security, and to that end to take effective measures for the prevention and removal of threats to the peace and security, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

Among the Principles in accordance with which the Organization and its Members shall act in pursuit of the Purposes stated in Article 1, Article 2, Paragraph 3 stipulates that

All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

And, lastly, referring to the functions of the General Assembly, Article 13 states that the General Assembly

shall initiate studies and make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification.

It has been maintained that this was not much. But before drawing any definite conclusion as to the question of much or little, let us see why the Charter referring to justice and law contains nothing more. At this point it may be well to recall some passages from the Report of Committee I/1 to Commission I, which, with minor exceptions, was adopted by the Commission, and the Conference as well in the ninth plenary session. The Report states that it was "practically impossible to draw a sharp and clear-cut distinction between what should be included under 'Purposes,' 'Principles,' or 'Preamble.' Given the nature of the substance we have in view, some single idea or norm of conduct could go into either of these divisions of the Charter without much difficulty." The Report goes on:

. . . the distinction between the three parts of the Charter under consideration is not particularly profound. . . . The provisions of the Charter, being in this case indivisible as in any other legal instrument,

are equally valid and operative. The rights, duties, privileges, and obligations of the Organization and its Members match with one another and complement one another to make a whole. Each of them is constructed to be understood and applied in function of the other. It is for this reason, as well as to avoid undue repetition, that the Committee did not find it necessary to mention again in each paragraph relevant dispositions included in other paragraphs of the same chapter or other chapters.

The Report points out that there must be no doubt as to the validity and value of any division of the Charter, whether it is called "Principles," "Purposes," or "Preamble." There are no grounds for supposing that the Preamble has less legal validity than the two succeeding chapters. Then there is the following passage: "The Committee held that the Charter cannot be amplified to include all major purposes and principles that cover international behavior, but should include the basic ones, which, by virtue of their being basic, can and shall serve the Organization and its Members to draw from them, whenever necessary, their corollaries and implications."¹⁰

(It would appear from these quotations that the small number of references to justice and law in the Charter of the United Nations is to be explained by the fact that all provisions of the Charter were considered to be equally valid and operative, irrespective of their place in the Preamble or in the two succeeding Articles, and that they were not isolated and independent rules and principles, but interdependent with one another to match with one another and complement one another, and to be understood and applied one in execution of the other.) Therefore more references to these principles would have constituted an undue repetition which the makers of the Charter were anxious to avoid. And, lastly, they selected for the insertion in the Charter only the basic purposes and principles covering international behaviour. It would be inappropriate to try to minimize the importance which the makers of the Charter attributed to the principles of justice and law in the functions of the Organization because of the fact that there are no more references in the Charter to these principles.

Two more facts from the process of the making of the Articles 1 and 2 of the Charter are to be cleared before drawing any conclusion as to the position of justice and law in the functions of the Organization. It may be recalled that the amendment to include the phrase, "in conformity with the principles of justice and international law" immediately behind the phrase, "To maintain international peace and security" in Paragraph 1, Article 1, was defeated: in Committee I/1 the amendment attained a bare majority, in Commission I—21 votes for, 21 against. A majority of two-thirds was required for the adoption. But the amendment to include the

¹⁰ *Documents*, Vol. 6, pp. 446-449.

words "and justice" in Paragraph 3, Article 2 was adopted as the result of a steady struggle.

What is the meaning of the rejection of the first amendment and the adoption of the second? The Report of Committee I/1 to Commission I will help us to clear this point. As regards the rejection of the first amendment the Report states: "It may seem, at first sight, that some Members opposing the first two motions were opposed to justice itself. On the contrary, all of those who took the floor to oppose the two motions were agreed that the concept of justice is a norm of fundamental importance. All affirmed that peace, real and durable, cannot be based on anything other than justice." Then the Report goes on to point out the reasons why the "almost tangible notion of peace and security" could not be brought together with a "notion which lacks in clarity" as that is the case with the notion of justice. According to the Report, that would "provide a loophole for questioning any specific action, and a possibility for delaying measures and procedure while discussing abstract definitions." The Organization should promptly stop any breach of peace or remove it. After that it can proceed to find a just adjustment or settlement of the dispute or situation. The Report goes on as follows:

The concept of justice and international law can thus find a more appropriate place in the context with the last part of the paragraph dealing with disputes and situations. There, it can find a real scope to operate, a more precise expression and a more practical field of application. There was no intention to let this notion lose any of its weight or strength as an over-ruling norm of the whole Charter.¹¹

Commander Stassen, delegate of the United States, in explaining the views of his country on this point of the Charter, observed that the Security Council in the matter of future peace of the world would have two important functions which he characterized as being the functions of the policemen and those of a jury. The policeman at any time that anyone breaks the peace and begins to fight shall say, "Stop fighting," or at any time that anyone is poised and ready to fight, "You must not fight." Next comes the very important function of the jury, a function which must be discharged in conformity with justice and international law.¹²

These comments, it would appear, indicate that by including the phrase, "in conformity with the principles of justice and international law" in its place in the Charter there was no intention on the part of the supporters of this amendment to let the notions of justice and international law lose any of their weight or strength as an over-ruling norm of the Charter. Nor do they indicate the intention to release the Organization from the obligation to respect and observe the principles of justice and international law. On the contrary, it was held that the Security Council in discharging its

¹¹ *Documents*, Vol. 6, pp. 453-454.

¹² *Documents*, Vol. 6, pp. 29-30.

functions of adjustment and settlement of situations and disputes arising from threats to the peace and suppression of acts of aggression or other breaches of the peace is bound to abide by these principles.

But what is the position of the Security Council when, to use the words of Commander Stassen, acting as a policeman, it has to stop an act of aggression or other breaches of the peace? Could the principle of justice be ignored, or even violated by the Security Council in these cases?

To find an appropriate answer to these questions we have to consider the changes brought about in the Charter by inserting the words "and justice" into Paragraph 3, Article 2. Article 2 deals with the Principles in accordance with which the Organization and its Members shall act in pursuit of the Purposes mentioned in Article 1. The Report of Committee I/1 to Commission I comments on the leading phrase of Article 2 as follows: "The keynote of collectivity is common to what precedes and follows this phrase, the text clearly indicating, 'The *Organization* and its *Members*.'"¹³ As to the Security Council, by virtue of Paragraph 2, Article 24, the Charter expressly points out that in discharging its functions for the maintenance of international peace and security the Security Council shall act in accordance with the Purposes and Principles of the United Nations.

Commenting on the inclusion of the words "and justice" into Paragraph 3, Article 2 of the Report states that "The Committee felt, in the light of past experience of some unjust adjustments or settlements, that it is not sufficient to assure that peace and security are not endangered. It added 'justice.'"¹⁴ And further, as regards the relation of the Paragraph with other parts of the Charter, the Report says: "Going further not to the text of Paragraph 3 itself, but to its relations with other parts of the Charter, it is clear that the Paragraph provides the conditions governing the *ex officio* intervention of the Organization in the settlement of disputes. The Organization and its Members are bound to abide by this principle."¹⁵

It appears to be clear that the makers of the Charter considered the *ex officio* intervention of the Security Council in the settlement of disputes to be governed by the principle of justice. Justice was not to be endangered by the *ex officio* intervention of the Security Council in the settlement of disputes. And they did not regard the approach to this principle to be of any purely idealistic nature. Commenting on the words "In pursuit" in the leading phrase of Article 2, the Report observes that "*In pursuit* does not indicate, as was made clear in the Committee, any purely idealistic approach. It definitely indicates the resolve of the Organization and its Members to give practical and effective application to both Purposes and Principles."¹⁶ That would mean that the Security Council in cases of

¹³ *Documents*, Vol. 6, p. 456.

¹⁴ *Documents*, Vol. 6, p. 458.

¹⁵ Same.

¹⁶ Same, p. 456.

ex officio intervention in the settlement of disputes is bound to give practical and effective application of the principle of justice. It seems that there is to be found the key for the understanding of the words of Senator Rolin that the peace is to be maintained at all costs with one exception—not at the cost of justice. Because the Security Council is bound to give practical and effective application of the principle of justice, this principle cannot be sacrificed for the maintenance of the peace.

The following hypothetical case may help to clear the matter. A state, member of the United Nations, in violation of the principle to refrain from use of force against the territorial integrity or political independence of any state, commits an act of aggression against another state. The latter resists the foreign invasion by force in exercising the right of self-defense recognized by the Charter. A war is in progress. The Security Council has to interfere *ex officio* and to restore the peace. The peace could be restored by suppressing the resistance of the victim of aggression; that is to say, by supporting the act of aggression. It would hardly seem that such a solution of the crisis were to be considered the right way for restoring the peace. Because it would be a solution at the cost of justice; that is to say, by sacrificing the right of the victim state to self-defense and by supporting the act of aggression. World opinion would hardly be satisfied with such a solution, and would suspect something wrong behind it. And, of course, there would be something wrong—a gross violation of the principle of justice to which the Security Council is restricted whether acting as a policeman or as a jury.

These considerations may help to clear the question as to the position of the principles of justice and law in the functions of the Organization, especially in those of the Security Council for the maintenance of the peace and security, whether their position is dominant, or subordinated to considerations of peace and security.

But, apart from this question, there is one point in the Charter which seems to have weakened the position of international law in the regime established by the Charter of the United Nations. It is concerned with the problem of domestic and international jurisdiction. The original Dumbarton Oaks Proposals in Chapter VIII, Section A, Paragraph 7, referred to international law as the criterion to define the limits of each respective jurisdiction. In the Charter the matter is dealt with in Article 2, Paragraph 7, but reference to international law is missing from it. Transferring the matter from Chapter VIII of the original Dumbarton Oaks Proposals to Article 2 of the Charter, the San Francisco Conference stressed the importance of the matter which from now on became one of the basic principles of the Charter. By omitting reference to international law the Conference deprived the principle of all legal precision which would have helped to operate it. As it is, there is no criterion in the Charter to define domestic and international jurisdiction. Nor is there reference to the competent organ to decide issues on this matter.

At the Committee I/1 state of the discussions of this Paragraph amendments were proposed to include the words "international law," but the respective motions failed to attain the required two-thirds majority. The Greek amendment to this end was defeated by a minority of 14 votes against 17, and the Belgian amendment by a minority of 14 votes against 18.¹⁷

The views of the Four Sponsoring Powers favoring the omission of the words "international law" in that Paragraph were expressed by Mr. Dulles, Delegate of the United States. According to the Summary Report they are as follows:

In reply to the contention that domestic jurisdiction should be determined in accordance with international law, Mr. Dulles again pointed out that international law was subject to constant change and therefore escaped definition. It would, in any case, be difficult to define whether or not a given situation came within the domestic

jurisdiction of a state. In this era the whole internal life of a country was affected by foreign conditions. He did not consider that it would be practicable to provide that the World Court determine the limitations of domestic jurisdiction or that it should be called upon to give advisory opinions since some countries would probably not accept the compulsory jurisdiction clause. In summary, Mr. Dulles stressed the virtue of the principle—its breadth and simplicity. The organization in none of its branches or organs should intervene in what was essentially the domestic life of the Member states. Moreover, this principle was subject to evolution.¹⁸

The Report of the Rapporteur has no comment to make on this point, and gives no clue for the interpretation of this broad and simple principle, and no help to find the norm governing the inevitable issues on matters of domestic and international jurisdiction. He, however, did not see any need for including it in the Article.¹⁹

Mr. Dehousse, Delegate of Belgium, after his amendment had failed to attain two-thirds majority, expressed the hope that the Paragraph, even without reference to international law, would not impede the functioning of the International Court of Justice. He argued that after two states had accepted the compulsory jurisdiction of the Court, and if one of those states should allege that it rejects the intervention of the Court on account of the fact that the question raised falls within domestic jurisdiction, the Court itself, by virtue of Article 36, Paragraph 6, of its Statute, could determine whether the exclusive jurisdiction clause might or might not be invoked.²⁰ But as it seems now, after the United States have accepted the compulsory jurisdiction of the International Court of Justice with the

¹⁷ *Documents*, Vol. 6, pp. 509-512.

¹⁸ Same.

¹⁹ Same, p. 511.

²⁰ Same, p. 112.

reservation of the right to decide whether or not the matter was essentially domestic, this hope might be dropped.

The same principle declared by the United States for the acceptance of the compulsory jurisdiction of the International Court of Justice if applied to matters within the functions of the United Nations might result in the establishment of a veto for states anxious to prevent the Organization or its Members from interference in cases they claim to be within their domestic jurisdiction.

Be that as it may, it has to be recalled that the notion "jurisdiction" is the creation of law within a legal system in which there are two or more entities displaying state activities. Law determines the space within which each entity displays its activities. In the absence of law there can be no jurisdiction. As in the international society there are many international personalities exercising activities, such as belong to sovereign states, the space within which each of them displays these activities is determined by law. If we are to abolish law, we are to abolish jurisdiction as well. Mr. Evatt rightly pointed out that there was no criterion for the definition of domestic and international jurisdiction other than international law. It would seem therefore that the omission of the words "international law" from Article 2, Paragraph 7, could not be interpreted as the abolition of international law as the criterion for the definition of domestic and international jurisdiction unless we presume that the makers of the Charter had express intention to abolish the notion "jurisdiction" itself. Then the terms "domestic jurisdiction" in Article 2, Paragraph 7, would have been given in the Charter a different meaning than the commonly accepted one. There seems to be no evidence to that.

What matters is the fact that the Charter has not expressly named the organ to settle disputes arising from matters of jurisdiction. These disputes are essentially legal in character, and in every legal system they as a rule are settled by the courts of law. As it is, the Charter has left the door open to the states to become judges in this matter in their own causes. If their decisions disagree, some procedure will have to be found to reach a settlement. The Charter itself seems to show the right direction. Article 36, Paragraph 3 points out that legal disputes should as a general rule be referred by the parties to the International Court of Justice. It would seem that there is no escape from the International Court of Justice as the competent organ for deciding disputes in matters of jurisdiction.

One observation still remains to be made on this point. The Peoples of the United Nations by an express provision of the Preamble of the Charter have undertaken "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law could be maintained." This passage from the Preamble of the Charter seems to stress the duty of states to respect the obligations arising from treaties and other sources of international law in all matters. There is no

exception for the question of domestic jurisdiction which as an essentially legal one is determined by international law and engagements. It would be at variance with this provision of the Preamble of the Charter which, according to the Report of the Rapporteur Committee I/1, has no less legal validity and value than the two succeeding chapters, if states were going to act as judges in their own cases in such preëminently legal matter and reach decisions in contradiction to the rules of international law which govern the relations that gave rise to the question of jurisdiction. Then conditions for the maintenance of the respect for the obligations arising from treaties and other sources of international law would not be established, and that would constitute a non-fulfilment in good faith of the obligations assumed by the Members of the United Nations in accordance with the Charter. It would appear therefore that the question of domestic jurisdiction will have to be decided in each case in accordance with the relevant rules of international law.

THE IMMUNITY OF STATE-OWNED VESSELS IN SWEDISH JUDICIAL PRACTICE DURING WORLD WAR II

BY STIG JÄGERSKIÖLD *

During the past few years Swedish Courts have repeatedly dealt with cases involving problems of international law of great general interest. Several of these cases have concerned problems of the immunity of ships owned by foreign Governments.¹ Each case has presented characteristic peculiarities and difficulties of its own and as a result various legal aspects of the problem have been thoroughly examined by the courts. Apart from these purely legal difficulties the cases have usually been of a politically delicate character. There has thus existed the risk that foreign Governments would attempt to bring pressure to bear on the Swedish courts whose independence and objectivity have, therefore, frequently been severely tested. This circumstance renders an examination of Swedish judicial practice during the past few years particularly interesting. Owing to the importance of the problems dealt with from the point of view of international law and of the light they shed on the administration of justice in Sweden during a difficult period, a brief summary and analysis of the principal cases may be of some interest to the American public.

The first of these cases concerned a number of Norwegian ships lying in the harbor of Gothenburg. The owners of the ships were certain Norwegian shipping companies whose chief executives had remained in Norway after the German invasion; these applied to the Swedish authorities for an arrest to be placed on the ships. The Norwegian and British Governments claimed immunity for the ships. But the ships had not been in Norwegian territory since the requisition was decided. Could this have taken effect on Swedish territory? ²

The second case concerned an Esthonian ship, the *Toomas*, which, in 1940, while lying in a Swedish port, had been nationalized by the newly formed Soviet Esthonian Government. The owner denied that this na-

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¹ For these problems see Hackworth, *Digest of International Law*, Vol. II, p. 423; Oppenheim, *International Law*, 5th ed., ed. by Lauterpacht, Vol. II, p. 668; Garner, "Immunities of State-owned Ships Employed in Commerce," in *British Year-Book of International Law*, 1925, p. 128.

² My learned colleagues, Professor Halvar G. F. Sundberg, Upsala University, and Professor Håkan Nial, Stockholm, gave their opinions on behalf of the British and Norwegian legations, which were published in 1942 and are of considerable interest.

tionalization decree was applicable to property in Sweden. The Soviet Government, however, had taken control of the ship although it was within Swedish territory and claimed immunity. The question then arose whether this claim should be allowed, considering the methods by which the Soviet authorities had come into possession of the ship.

The third case concerned a number of Finnish ships whose arrest in Sweden had been demanded by Swedish creditors. While the ships were still under arrest in Swedish ports the Finnish Government decided to requisition the ships and asked for the repeal of the arrest on the plea of immunity. This measure raised the problem as to whether the ships had at any time prior to the executive measures taken by the Swedish authorities been in the possession of the Finnish Government and further whether, after the Swedish authorities had proceeded to arrest them, they could become the property of the said Government.

1. *The Norwegian ships at Gothenburg.*

It was maintained that the ships in question had become state-owned as a result of so-called provisional decrees of April 20 and May 18, 1940, by which the Royal Norwegian Government—at that time still in Norway—had requisitioned all Norwegian ships; the requisitions implied that the ships were placed at the Government's disposal, but the ownership remained with the companies which were entitled to compensation. Among the ships were several lying in the Swedish port of Gothenburg; some of the ships were later leased to the British Government. That Government sent masters to Sweden who took possession of the ships.

The shipping companies, still in Norway, were, one must presume, subject to German pressure. They applied, on October 25, 1941, to the Chief Executor at Gothenburg for an arrest on the ships with a view to preventing their departure from Sweden.

According to Swedish law an arrest can be granted either provisionally or definitely. Accordingly the first question to be decided was whether an arrest *ad interim* could be granted or not. Now the Royal Norwegian and the British Governments claimed that the ships in question were state-owned and immune so that no executive measures could be taken against them.

The Chief Executor at Gothenburg was the first to decide in this matter. He found that the provisional arrest applied for by the shipping companies could not be granted. The shipping companies, however, lodged an appeal with the Göta Court of Appeal, which ordered an immediate arrest *ad interim* on the ships.

The question of definite arrest was thereupon referred back to the Executor in Gothenburg. The Executor ruled, on November 6, 1941, that he could not grant such an arrest and ordered that the provisional arrest, decided by the Göta Court of Appeal, should be rescinded. He founded

his decision on the fact that the ships had been legally requisitioned by a foreign Government and were in the actual possession of that Government or the British Government; that the Governments had declared that the ships were used for public and not private purposes, and that they therefore were entitled to immunity.

This decision also was overruled by the Göta Court of Appeal. The Court did not find the claims for immunity well founded; the shipping companies had shown better right to the ships than the Governments. In view of the evident risk of the ships departing from Sweden, the Court ordered a new arrest to be placed on them. In a dissenting opinion, however, the President of the Court stated that, even if in his view the ships were not used for public but for private purposes and thus not entitled to immunity, the shipping companies had not shown that the Norwegian and British Government's possession of the ships was illegal; he therefore voted against the granting of an arrest.

The Norwegian and British Governments appealed to the Supreme Court of Sweden for a final decision. This was given on March 17, 1942.³ It was founded on a thorough examination of the various aspects of the case and was in favour of the Governments. The Supreme Court argued as follows:

It had been proved that the British Government was in actual possession of the ships. As a general principle—with some modifications—the right of foreign powers to immunity is acknowledged in Swedish law, even if there does not exist any written law to that effect. It is moreover of particular importance that the principle of immunity is recognized in most countries, including the neighbouring great powers France, Germany, and Great Britain as well as in the United States of America. Having regard to the great importance of the matter for international law it could not, in the absence of valid reasons for such a view, be assumed that Swedish law would depart from the interpretation of the principle adopted in these countries. The principle of immunity was subject to modification only in case a state did not make use of its sovereign powers but was acting like a private individual, that is, if the object of its activity were not public but private purposes. This did not apply in the present case. Even if some doubt could arise in time of peace with regard to the nature of the cargo, this was evidently impossible in time of war, when the transport of supplies for the population was an urgent governmental interest. Still, a Government's possession of a ship was not to be respected in every case; if, the Court declared—and here differed from recent British precedents⁴—private property in Swedish territory had been seized by viol-

³ See the Swedish publication of leading cases, *Nytt juridiskt arkiv* for 1942, Vol. I, p. 65. The case is to be reported in the Annual Digest.

⁴ *Christiana, Lloyd's List Law Reports*, Vol. 60, p. 7.

ence or other high-handed action disturbing previous possession the injured party would be entitled to the support of the Swedish authorities in recovering possession. In the case under discussion, however, there was no question of such action.

The Court thereupon discussed the question whether the requisition could have been legally executed when the ships were within Swedish territory.⁵ It would be impossible for a foreign Government to execute such a measure by force within the territory of another state. But in this case, there had been no question of force, the captains having voluntarily delivered the ships to the representatives of the Norwegian and the British Governments. The situation would have been different if the Norwegian law, on which the requisition was founded, had been of such a nature that it conflicted with the general principles of Swedish law. In that case the Norwegian law would not have had any effect in Sweden. That, however, was not true of the relevant Norwegian law.⁶

2. *The Toomas.*

By a degree of July 23, 1940, the Soviet Esthonian Parliament nationalized all banks, industrial enterprises, mines, and transport companies. On August 6, 1940, there was founded a maritime transport central office. Before these rules came into force the *Toomas*, owned by Esthonian citizens and entered in the Esthonian Shipping register, had left for Stockholm where it afterwards remained. On August 27, 29, and 30, 1940, the owners of the ship, who had remained in Esthonia, authorized the Soviet Russian commercial delegation in Stockholm to act on their behalf in all matters concerning the ship. Not until October, 1940, however, did the master of the ship place it at the disposal of the Soviet Union, whereupon he received a Soviet Russian ships-certificate and submitted the list of the crew to the Soviet authorities; hereafter the ship flew the Soviet colours.

A director of a Swedish shipping company, one Carlbon, thereupon took out summons against the Esthonian master in order to recover certain expenses which he had incurred for the ship on behalf of the master. The master admitted the correctness of the claim. On February 9, 1942, the Court of first instance, the Stockholm City Court, directed him to surrender the ship to Carlbon in payment for the latter's claim with costs. The Soviet authority, however, lodged an appeal against the decision of the Court, and claimed that, as a result of nationalization, the ship was the property of the Soviet Union, the Esthonian master having been dismissed and a Russian master appointed in his place. On March 9, 1943, the Svea Court of Appeal dismissed this Soviet claim. The powers issued

⁵ McNair, *Legal Effects of War*, 1944, p. 381.

⁶ This case is fully discussed by Sundberg in *Nordisk Tidskrift for International Ret*, 1942, and in *Strödda uppsatser*, 1943, p. 89, as well as by Gihl in *Svensk Juristtidning*, 1944.

by the Esthonian owners for the Soviet commercial delegation could not, in view of the circumstances in which they had been issued and the close connection with the nationalization, be regarded as valid. The decision to nationalize Esthonian property could have no legal effect on such property which was already in Sweden. Consequently the ship was not Soviet property. On April 13, 1944, the Supreme Court likewise found that neither the actions of the owners, who had remained in Esthonia, nor the decision of the Esthonian master to surrender the ship to the Soviet Russian authorities, could be regarded as valid in law; the decrees concerning nationalization could not, in accordance with general rules concerning the territorial limitation of such laws, and irrespective of the fact that the ship had actually passed into the possession of the Soviet Union in the way described above, be applied to this ship, which had arrived in Sweden prior to the promulgation of the decrees in question. The Soviet claims to the ownership of the *Toomas* were thus rejected.

When, however, the Swedish creditor referred to this decision in order to seize the ship, the Soviet authorities objected that the ship was state-owned and consequently immune against executive measures. On February 18, 1942, the Governor General of Stockholm, it is true, found, as did the Svea Court of Appeal in its decision of May 21, 1942, that this objection could not be considered. The Supreme Court, however, found that though the ship could not, as the Court had found in the case cited above, be regarded as the Property of the Soviet Union, this circumstance could not in itself prevent the Soviet Union, in virtue of its possession of the ship, from enjoying immunity against executive measures. The *Toomas* was in the possession of the Soviet Union. Therefore, the debts which the Esthonian master had been directed to pay by surrendering the ship could not in the circumstance be seized.

In this case the Swedish Supreme Court consequently went further than it had previously considered itself justified in doing in its decision concerning the Norwegian ships, referred to above. Immunity was held to exist irrespective of the fact that the Government took possession of the ship in consequence of a nationalization which was in contradiction to fundamental Swedish legal principles. The decision therefore conforms to the principles laid down in the British *Christiana* case.

3. *The Finnish ships.*

After the first world war Gustaf B. Thordén, a Swedish citizen, had built up a big shipping business in Finland. After 1940 eight of his ships, owned by Finnish incorporated companies controlled by Thordén, remained in the Baltic, while the others had been chartered or requisitioned by the Allies. A Swedish company, Altumex, also controlled by Thordén, had considerable claims on the eight ships mentioned above. In the extremely difficult situation in which Finland had been placed in June

1944 as a result of military events, leading to an increase of German control, the Swedish creditor applied for an arrest to be placed on the ships, which at that time lay in Swedish harbours. After Thordén, as manager of the Finnish shipping companies, had admitted the correctness of the claims of the Swedish company and these had been upheld by Swedish courts, the Swedish company also applied for execution of the judgment. The applications for arrest were granted and the ships placed under *ad interim* arrest.

The Finnish Government, regarding this action as a disguised attempt to export capital from the country, at first retorted by requisitioning the ships and later applied to the Swedish authorities for their release. The Finnish Government also refused to allow seizure on the plea that the ships now were state-owned and thus immune. Later the Finnish Government even succeeded in having Thordén's Finnish companies declared bankrupt, which, in accordance with a convention between Sweden and Finland relating to the legal effects of bankruptcy, entailed the revocation of the arrest; Thordén, however, objected that the declaration of bankruptcy had been made in such circumstances that it conflicted with Swedish public order and therefore could not be regarded as valid in Sweden. This particular aspect of the case, however, need not be discussed here. In fact the ships were not released because of the bankruptcy.

The problem raised by the Thordén case which is of interest here concerns the question of the immunity of the ships; it seems to be unique in the history of international law. The question has often arisen whether a ship requisitioned by a Government is immune and whether requisition without actual possession is sufficient to constitute immunity. In the case under notice, however, the question arose whether a state by requisition could transform into a state-owned vessel a merchant-ship against which executives measures had already been taken by another state within its own territory. Since at the time of the arrest the Thordén ships were lying in different Swedish ports, several Swedish executive and judicial authorities were called upon to decide in the matter. The decisions, however, varied and before the first of the cases reached the Supreme Court Thordén and the Finnish Government came to an agreement; hence a really authoritative Swedish decision is not available. The decisions of the lower courts, however, point to a certain conclusion. At Stockholm, it is true, the Finnish claim for immunity was accepted by the authority of first instance; on July 21, 1944, the seizure of a Thordén ship was refused in view of the immunity, which the requisition apparently involved. This decision was, however, overruled. On July 25, 1944, the City bailiff on Trälleborg decided to respect the immunity of two Thordén ships, since on June 27 the Finnish Government had requisitioned them and the masters had stated that they operated the ships on behalf of the Government. The Chief Executor referred the matter back to his subordinate as his colleague

in Stockholm had done, on the ground that the requisitioning measure had not been carried out before the date when the ships were placed under arrest, so that the ships could not claim immunity. The Court of Appeal, with which the Finnish Government lodged an appeal, upheld the decision of the Chief Executor on the same grounds.

* * *

From an analysis of the Swedish practice with respect to the question of immunity the following conclusions emerge.

State-owned ships, even if merchantmen, have been treated as immune irrespective of the fact that they had been requisitioned by a foreign Government while lying in Swedish ports, provided they were in the actual possession of the Government. The immunity has been respected even if the Government was found to have no legal title to the ship, although the Supreme Court had at first expressed a different opinion. But immunity was granted in case the foreign Government had requisitioned the ships at a time when Swedish executive measures had already been taken against it.

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THE PACT OF BOGOTA

The American Treaty of Pacific Settlements, officially designated Pact of Bogota, was signed on behalf of the twenty-one American States on April 30, 1948, with reservations by seven of the signatories. It is intended to replace nine agreements which have sometimes been referred to as constituting the inter-American peace system. The procedures of peaceful settlement provided for in these nine agreements were:

- (1) Under the Treaty of May 3, 1923, to Avoid or Prevent Conflicts between the American States—the procedure of inquiry by a commission of nationals of American States, appointed at the instance of any Government directly interested, upon its being found impossible to settle controversies through diplomatic procedure or by submission to arbitration or in cases of imminent danger of armed conflict.
- (2) Under the General Convention of Inter-American Conciliation, January 5, 1929—the procedure of conciliation by a commission appointed as above with respect to all controversies which it may not have been possible to settle through diplomatic channels.
- (3) and (4) Under the General Treaty of Inter-American Arbitration and the Additional Protocol of Progressive Arbitration, January 5, 1929—the procedure of arbitration of legal questions, with the exception of (a) matters within the domestic jurisdiction of the parties and not controlled by international law, (b) matters affecting States not parties to the Treaty, and (c) matters specially reserved by the parties.
- (5) Under the Anti-War Treaty of Nonaggression and Conciliation, October 10, 1933—the procedure of conciliation by a commission appointed as above with respect to all controversies which it has not been possible to settle by diplomatic means within a reasonable period of time, with no limitations other than those set forth in the Treaty.
- (6) Under the Additional Protocol of December 26, 1933, to the General Convention of Inter-American Conciliation—the procedure of conciliation by commissions established on a permanent basis by agreements between each of the parties to the General Convention and each of the other parties.
- (7) Under the Convention of December 23, 1936, to Coördinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States—the procedures of inquiry, conciliation and arbi-

tration, as above, and the procedures of mediation and consultation of governments.

- (8) Under the Treaty of December 23, 1936, on Good Offices and Mediation—the procedure of recourse to the good offices or mediation of an eminent citizen of one of the American States, preferably chosen from a permanent general list.
- (9) Under the Treaty of December 23, 1936, on the Prevention of Controversies—the procedure of study, by permanent bilateral mixed commissions, of the causes of future difficulties or controversies.

As of January 1, 1948, only one of these nine agreements had been ratified by all the American States. This was the Anti-War Treaty of Nonaggression and Conciliation, fifth in the list above; seven of the ratifications of the Anti-War Treaty were subject to reservations. The first four of the nine agreements were neither signed nor ratified by Argentina; the second, third and fourth were not ratified by Bolivia nor Costa Rica; the third and fourth were not ratified by Paraguay nor Uruguay; the fourth was not ratified by Brazil, Colombia, Panama; Peru, nor the United States; the sixth was not signed nor ratified by Argentina, Bolivia, Brazil, Costa Rica, Cuba, El Salvador, nor Peru, and was not ratified by Uruguay; the seventh was not ratified by Argentina, Bolivia, Costa Rica, Paraguay, Peru, Uruguay nor Venezuela; the eighth was not ratified by Argentina, Bolivia, Paraguay, Peru, Uruguay nor Venezuela; and the ninth was not ratified by Argentina, Bolivia, Brazil, Paraguay, Peru, Uruguay nor Venezuela. The situation clearly justified the statement made by the Director of the Pan American Union, in September, 1947, that we cannot today truly affirm the existence of an inter-American peace system.

The provisions of the Pact of Bogota, embodying the results of the latest effort to work out procedures of peaceful settlement acceptable to all the American States, may be briefly summarized as follows:

Chapter I. General obligation to settle by the procedures set forth in the Pact all inter-American disputes except those relating to (a) matters essentially within the domestic jurisdiction of a State, (b) matters already settled by agreement or arbitral award or judgment of an international tribunal, and (c) matters as to which recourse to competent domestic tribunals is open to the persons concerned.

Chapter II. Recognition of the propriety of the exercise of good offices by one or more governments or eminent citizens or the submission of disputes for mediation by one or more governments or eminent citizens during a period of five months before resort to more formal procedures.

Chapter III. Provision for the establishment of permanent commissions of investigation and conciliation by bilateral agreements among the

American States; for the establishment of a permanent panel of conciliators, two designated by each American State from among its nationals enjoying the highest reputation for equanimity, competence and integrity; for the convocation of one of the bilateral commissions or a special commission of persons chosen from the permanent panel upon application of any State to the Council of the Organization of American States with a view to the use of the procedure of conciliation and investigation for the settlement of any controversy; for immediate suspension of the controversy upon such application; and for completion of a report and recommendations by the commission within six months after its entrance upon its duties.

Chapter IV. Recognition of the compulsory jurisdiction of the International Court of Justice for all legal disputes within the scope of Article 36, paragraph 2, of the Statute of the Court; recognition of the right of any party to the Pact to resort to the International Court of Justice for the settlement of inter-American disputes (other than those excepted under Chapter I) upon the failure of the parties to settle such disputes by conciliation or to agree to settlement by arbitration; provision for compulsory arbitration of cases (other than those excepted under Chapter I) which the Court declines to hear.

Chapter V. Provision for constitution of an arbitral tribunal of five members within two months after refusal of the International Court of Justice to hear any dispute (with the exceptions noted) and for statement of issues by the Court if the parties fail to agree on such statement.

Chapter VI. Provision for consultation of Ministers of Foreign Affairs in the event of failure of any party to comply with a decision of the International Court of Justice or of an arbitral tribunal.

Chapter VII. Provision for request of advisory opinion of the International Court of Justice on any legal question.

The States which filed reservations at the moment of signature, as noted above, were Argentina, Bolivia, Ecuador, Nicaragua, Paraguay, Peru, and the United States. The reservations of Bolivia, Ecuador, and Nicaragua, and one of the three reservations of Peru relate to the application of the procedures of peaceful settlement to matters that have been previously settled. Bolivia, Ecuador and Nicaragua apparently take the view that nothing is settled until it is settled right; Peru, on the other hand, records its concern as to the possibility of the reopening of matters that have been settled. The reservations of Argentina, Paraguay and the United States and two of the Peruvian reservations go more deeply to the substance of the Pact. Argentina does not accept any of the provisions relating to judicial settlement or arbitration. Paraguay would require a special agreement for the arbitration of non-juridical questions affecting the national

sovereignty. Peru declines to be bound by the decision of the International Court of Justice on the question whether a matter is essentially domestic; she also reserves the provision for the setting up of an arbitral tribunal by the Council of the Organization of American States in the event of failure of one of the parties to take the action required for the constitution of the tribunal. The United States, finally, maintains the reservations included in its declaration of acceptance of the compulsory jurisdiction of the International Court of Justice; declines to present to that Court any dispute which it does not consider to be within the Court's jurisdiction; will require a special agreement for the submission of any dispute to arbitration; and (in this respect supported by Argentina) refuses to agree to refrain from action on behalf of its nationals with respect to all matters as to which recourse may be had to competent domestic tribunals.

It is evident that the effort made at Bogota was not wholly successful. The provisions of the Pact with respect to good offices, mediation, investigation and conciliation have, so far, not been the subject of reservations; and if the Pact is ratified by all the parties without reservation of any of these provisions, substantial progress will have been made toward the constitution of an inter-American peace system. The provisions for compulsory reference of non-juridical questions to the International Court of Justice and for compulsory arbitration of such questions in the event of the refusal of the Court to take jurisdiction have, however, been rejected wholly or in part by four American States and are likely to be the subject of reservations by other States at the time of ratification. The architects of the inter-American peace system have still much work to do.

EDGAR TURLINGTON

THE ECONOMIC AGREEMENT OF BOGOTA

During the past year there have occurred two important international conferences at which issues of international economic policy were discussed. The first of these was the United Nations Conference on Trade and Employment which commenced in Havana, Cuba, in November, 1947, and concluded, in March, 1948, with multilateral agreement upon a charter for a United Nations International Trade Organization. The second of these meetings was the Ninth Conference of American States at Bogota, Colombia, which followed almost immediately after the termination of the Havana Conference and resulted, among other things, in the Economic Agreement of Bogota.¹

Certain fundamental differences between the Havana Charter and the Bogota Agreement are important. For one thing, the Havana Conference

¹ The Economic Agreement was only one of a number of documents agreed upon at the Bogota Conference, which covered a wide range of matters relating to the organization and policy of the Inter-American System.

dealt primarily with matters of trade policy and only to a relatively minor extent with questions of investment policy. The Economic Agreement of Bogota, on the other hand, deals primarily with investment policy and financial and technical coöperation. Another important difference is that Havana was one of the general international conferences held under the auspices of the United Nations at which fifty-two nations were represented, whereas the Bogota Conference was regional in character, comprising only the twenty-one American Republics which form the Pan American Union or, as it is now known, the Organization of the American States.² This meant that the issues at Bogota were simpler and a number of the complicating factors which prolonged the Havana Conference were not present in the deliberations at Bogota. Furthermore, unsolved economic problems were assigned to an Inter-American Economic Conference to be held in Buenos Aires.³

Yet, despite these differences, the underlying issues at both Havana and Bogota were basically the same. At both conferences the United States, with an enormous industrial production, a high standard of living, and great mastery of the techniques of mass production and distribution, stood for the maximum possible freedom for private international trade and investment, urging that the laws of supply and demand economics were sound and that they should be given the greatest possible freedom. On the other hand, at both conferences nations of relatively little industrialization and a low standard of living asserted a determination to adhere to protective measures that might help them increase and defend national industries, even if in so doing they defy the laws of supply and demand economics. The result of both conferences was a series of compromises which can be seen clearly in the texts. It is a tribute to the patience and negotiating ability of all concerned that any agreements were achieved. Perhaps the fact that the issues had been fully debated at Havana just prior to Bogota made possible a more rapid conclusion at the latter conference than would otherwise have been the case.

With the foregoing as a background, some of the specific issues dealt with in the Bogota Agreement may be considered.

1. *Raw Material Prices*

The Bogota Agreement contains in its first chapter a series of "principles," only one of which will be singled out for specific mention here. That deals with the question of raw material prices. The nations of Latin America which have been and still are heavily dependent upon their ex-

² This change in name is provided for by the Charter of the Organization of the American States signed at Bogota on April 30, 1948.

³ It was agreed at Bogota that there should be held in Buenos Aires a Special Economic Conference to be convened at the call of the Inter-American Economic and Social Council. It was contemplated that this conference would begin late this year.

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ports of raw materials for their very livelihood have naturally had occupation with the prices which those materials command in world markets. They saw in the early thirties the prices of many of these materials at the bottom (as, for example, Chilean nitrates and Bolivian tin), while the prices of manufactured goods remained relatively steady. The result for them was general economic collapse, defaulted bond issues, and a strong determination to do something about it if possible.

During World War II the United States was a heavy buyer of these materials and production of many of them, such as rubber, was stimulated beyond any possibility of continuance of a market in the postwar period. At Mexico City in 1945 the American Republics strongly urged the United States Government aid in tapering off these purchases pending European recovery, and thus a restoration of European markets, and I hopefully at United States plans for stockpiling.

At Mexico City it was agreed that when, during the postwar transition period, it should finally become necessary to reduce purchases, which reductions would be likely to affect seriously the stability of the economies of the producing countries, the purchasing country should adopt measures designed to minimize the adverse consequences.*

At the time of the Mexico City Conference the war was still on. When the delegates met at Bogota, there had been a substantial period of postwar world recovery had progressed more slowly than was perhaps anticipated at Mexico City, but there had been a continuing market for the products of Latin America. However, there hung over the delegates the immediate question as to the prices which would be paid for primary products under the Marshall Plan and the still continuing long-term question of stabilization of material prices. Anxiety over the price situation was strong because the large dollar balances accumulated during the war had been practically exhausted, leaving the Latin American nations entirely dependent on foreign markets for their foreign exchange requirements. Hence the question again came up at Bogota.

In Chapter One of the Economic Agreement of Bogota there was set forth an intention to cooperate in facilitating access on equal terms to trade, products, means of production and knowledge. At the same time the nations reaffirmed "their resolution that, as a general policy, there should be taken into account the need to compensate for the disparity which is frequently noted between the prices of raw materials and the prices of manufactured products by establishing the necessary balance between them" (Article 3).

This subject was again dealt with in Article 30 which provided that the States agree to cooperate in international agreements to prevent or correct dislocations in regard to basic raw materials, persistent disequilibrium

* Article 21. The conclusions of the Inter-American conference on problems of economic development and peace. Mexico City, 1945.

tween production and consumption, the accumulation of excessive stocks and sharp fluctuations in prices.

To both these articles the United States filed reservations. In neither reservation did it set forth its reasons, but its position must be quite clear. In the first place, artificial price supports for raw materials would be contrary to the basic economic principles for which the United States has stood (even though domestically the United States does support farm prices). Furthermore, any support for raw material prices would have to come from the United States, and even from the point of view of stock-piling, the United States could give no commitment since legislative action and appropriations would have to be obtained. Finally, the United States could point to Chapter VI of the International Trade Organization Charter which sets forth a mechanism through inter-governmental commodity agreements for the stabilization of raw material prices.

2. Industrialization and Diversification

The basic solution to the problem of dependence upon raw material prices in an international market as visualized by all of the other American republics is industrialization. Industrialization has a psychological and political appeal in the modern world in that it is believed that the nation which becomes industrialized has grown up and become mature. There also exists an almost blind faith that from industry will flow greater prosperity and a higher standard of living regardless of the relationship of available natural resources or markets to the precise form of industrialization contemplated. Beyond these psychological factors, however, is the conception that with industrialization will come diversification of product and far less dependence on the part of the national economy upon selling one product to obtain foreign exchange. This desire for diversification and less dependence upon the world market has been heightened by the wartime experience of shortages, when all of the countries were dependent upon the ability of the United States to produce and export the manufactured products which they needed. For these reasons, the remainder of the important clauses in the Economic Agreement of Bogota relate primarily to the issue of industrialization.

3. Technical Coöperation

Chapter Two of the Agreement deals entirely with the subject of technical coöperation between the American republics. Great emphasis has been placed in recent years upon the technology of an industrial nation and the vital importance of technologically trained personnel. The dictionary has acquired a new phrase which is constantly reiterated—the phrase “know-how.” The Latin American countries are very ready to admit that they are deficient in this and extremely anxious to obtain it. They

know they can obtain it in conjunction with United States private capital investment. For reasons which are understandable, they would like, if possible, to obtain the maximum technical assistance in meeting their problems and they have a tendency to place a greater emphasis upon technical information than upon management. As a result, the files of most Latin American governments are full of technical reports, a great percentage of which have never been put into effect.

As a general proposition the United States Government has been anxious to coöperate in making available technical knowledge wherever it could fulfill a useful function. The need for technical studies has, however, become of real practical importance as the various Latin American nations face the necessity of presenting persuasive loan applications to the International Bank and the Export-Import Bank.

Under Public Law 63 many United States government officers have been assigned as advisers to departments of Latin American governments, and in other ways through private and public agencies additional facilities, training and advice have been made available.⁵ Accordingly, there are all the evidences of a general area of agreement with regard to the provisions in Chapter Two.

This Chapter vests responsibility for the development of technical coöperation in the Inter-American Economic and Social Council (Article 10) which is directed to prepare an inventory of the economic potential of the States, promote research, training, studies, make available information and technical advice and, on request, to study specific proposals for development or immigration and assist in preparing for their presentation for public or private financing. To perform these responsibilities the Council is authorized to form a technical staff (Article 11) to be paid for from the Pan American Union budget (Article 15), but studies of special projects are to be made for the account of the states requesting them (Article 16).

This Chapter is clear in its concept; its utility would in considerable measure depend on the amount of funds available and the skill of those who direct and do the work. Experience suggests the danger that the funds available may be too limited to permit work of the highest technical standards. Yet anything less would scarcely be worthwhile.⁶

4. *Financial Coöperation*

Chapter Three of the Bogota Agreement deals with financial coöperation. Underlying this Chapter is Latin American disappointment at the absence

⁵ Public Law 63 of the 76th Congress (approved May 3, 1939)—53 U. S. Stat. 652 amending Public Law 545 of the 75th Congress—52 U. S. Stat. 442.

⁶ The Inter-American Economic and Social Council has been advised by the Secretary General of the Organization that there will be available for this purpose under the current budget less than \$200,000, which would seem far from adequate to accomplish the purposes set forth.

of any Marshall Plan for that area. The Latin American countries take the position that Europe today is more industrialized and has a better standard of living than their own countries and that, as the Marshall Plan is directed towards a considerable increase in the industrialization and production of Europe, they are entitled to equal consideration. The fact that ECA funds will reach Latin America through American "off-shore" purchases does not satisfy them, partly because these funds will tend to flow heavily to countries like Argentina which are already the most developed and partly because these funds are regarded as merely maintaining existing export markets and alleviating existing dollar shortages rather than supplying new funds for development.

Also involved is Latin American disappointment that funds have not been more readily made available through the International Bank for Reconstruction and Development and the Export-Import Bank. This partly flows from the application by these banks of strictly business principles, but also in considerable measure from the fact that neither bank normally makes loans covering the local currency requirements of projects.⁷ For the local currency requirements the borrowing nations must produce their own capital. In most Latin American countries such capital is not readily available and commands high interest rates. Such of it as there is tends to flow into real estate rather than into industrial projects.

The United States takes the position that, while this may be so, the Latin American countries should take every possible step to stimulate the development of local capital and the responsibility for fostering their own economic development.

The language of Chapter Three reflects these points of view. Thus Article 18 provides that the States undertake to grant reciprocal financial coöperation for accelerating their economic development. On the other hand, the States undertake to stimulate the local investment of national savings and foreign capital, and to utilize the services of the International Monetary Fund, but it is also agreed that bilateral agreements outside the Fund will be made on mutually advantageous bases (Article 19). There is agreement to make the International Bank effective, to continue to extend intergovernmental credits for sound projects not involving excessive permanent protection or subsidies, to establish "a criterion" to grant fa-

⁷ The International Bank, Section 3 of Article IV, provides, in sub-section (b), as follows: The Bank may, in exceptional circumstances when local currency required for the purposes of the loan cannot be raised by the borrower on reasonable terms, provide the borrower as part of the loan with an appropriate amount of that currency.

As to the Export-Import Bank, there is no legislative provision forbidding local currency loans although the purpose of the Bank has been to finance United States exports and imports. However, it is not the present policy of the Bank to make loans in local currency. Thus, the general policy statement of the Bank, revised as of August 1, 1947, states, "The Bank does not ordinarily finance expenditures other than for United States goods and services."

cilities for payment of loans in local currencies when there is an acute shortage of foreign exchange (Article 20). Finally, the States agree to stimulate the development of local money markets to provide the local currency needs of development projects and that international financing should not be sought for local currency requirements. On the other hand, it is also set forth that as long as national savings are inadequate, international local currency loans may be necessary (Article 21).

5. *Private Investment*

While Chapter Three on Financial Coöperation may be regarded as the chapter in which the Latin American nations were most interested, Chapter Four on Private Investment could be described as the chapter of greatest United States interest. Secretary Marshall in his opening speech at the Bogota Conference laid great stress upon the fact that governmental financial assistance from the United States could not be looked to for the satisfaction of Latin American needs, but rather that the countries of Latin America should stimulate their development by attracting United States private capital by offering terms of security and non-discrimination which would make such investment attractive. Secretary Marshall's announcement was a disappointment to Latin America and his later much-dramatized announcement that a request had been made to Congress for a five hundred million dollar increase in the lending authority of the Export-Import Bank fell upon a cold audience.⁸

Latin Americans know that United States private capital is hesitant to flow to their shores upon the terms which Latin America is prepared to offer. American business enterprise protested the lack of security against the risks of expropriation without adequate and effective compensation, various discriminatory measures in the way of taxation, exchange restrictions, etc., and discriminatory administration of otherwise reasonable laws, and a series of restrictions upon the use of foreign technicians and managers which American companies felt would hamper the success of their operations. On their part, the Latin Americans asserted their sovereignty. They pointed out the enormous economic power of large American corporations, past abuses of that power by American business and the necessity that they should be able through such measures as they should choose to hasten their own economic development and their own local ownership of that development.

This debate took place against the background of Havana. The original draft of the Charter of the International Trade Organization presented to the preparatory meeting in Geneva had no provision with regard to international investment. Largely at the insistence of American business the United States Government presented to the Geneva meeting a proposed

⁸ Even this authority was not in fact granted by the 80th Congress.

agreement covering international investment. At Geneva this draft was so amended as to be totally unacceptable to the nations which were exporters of capital. This was one of the major subjects of debate at the Havana Conference with the result that the ITO Charter as finally approved contains in Chapter 12 very brief reference to the subject which merely states that international investment can be valuable, that it will be stimulated by opportunity, that each nation has the right to determine whether and to what extent and upon what terms it will permit foreign investment and then suggests that the whole subject be covered by bilateral and multilateral agreements between the different member nations. In substance there was no agreement at all at Havana and the Bogota Conference may be regarded as an attempt to reach the kind of multilateral agreement recommended.

That agreement was reached was one of the major achievements of the Bogota Conference even though there were reservations to a number of the paragraphs. That it was as favorable to private investment as it was should be a cause for congratulation to the United States delegation. However, it should also be realized that a reason for such agreement is that, by and large, all of the American republics still believe in the private enterprise system to an extent greater than in other parts of the world.

Chapter Four starts with a declaration of the importance of private investment, that it needs both opportunity and security, and that it shall receive equitable treatment. There is agreement not to take unjustified, unreasonable or discriminatory action against it that would impair its legally acquired rights and not to impose unjustified restrictions upon the transfer of capital or earnings. In return there is agreement that the nation exporting capital will not impede unreasonably its outward flow (Article 22). There is a declaration that foreign investment should be made not only for profit, but also with a view to the sound development of the country and the welfare of the persons directly dependent upon the enterprise; that there will be just and equitable treatment to both national and foreign personnel and training of national personnel, but it is recognized that it is desirable to permit the employment of a reasonable number of foreign experts and executives (Article 23). It is stated that foreign capital is subject to national laws and the States reaffirm their right to establish measures to prevent intervention in local politics or the prejudicing of national security or fundamental interests and to establish terms upon which they will permit foreign investments (Article 24). No expropriation of foreign property rights shall take place for reasons different from those applicable to national property. Any expropriation "shall be accompanied by payment of a fair price in a prompt, adequate and effective manner"⁹ (Article 25). The nations declare their intention

⁹ This language used is a slight variation from the traditional, primarily in the use of the word "price" instead of the word "compensation." (Hackworth, *Digest of International Law*, Vol. II, p. 63; Whiteman, *Damages in International Law*, Vol.

to develop uniform principles of corporate accounting and standards of fair disclosure to private investors (Article 26). They undertake to liberalize their tax laws, to eliminate double taxation and avoid burdensome or discriminatory taxes and to seek to conclude agreements against double taxation (Article 27).

Reservations to the foregoing chapter were filed by eight nations, particularly to Article 25. The purport of these reservations was that the application of the principles should be made by the expropriating nation under its own laws and constitution and in its own courts. These reservations reflect much history in the relationship between the United States as an investor and its Latin American neighbors. In the past the United States followed a policy of enforcing unilaterally what it conceived to be the rights of its citizens under international law. To this the Latin American nations have reacted by taking the position that any efforts by the United States to enforce the rights of its citizens is an impairment of their sovereignty.¹⁰

6. *The Reservations*

Due to the pressure at the end of the Conference for adjournment and in part to the circumstances under which the Conference was held, the number of reservations to the Economic Agreement of Bogota was very high. The result has been to present the difficult and controversial issue as to the effect of these reservations. As a consequence, the United States representative on the Inter-American Economic and Social Council has filed a memorandum dated June 25, 1948, describing the reservations and their effect and stating the tentative conclusion of the United States that it would be desirable to see if all or most of the reservations could not be eliminated, or at least to reduce and clarify their number and make precise their effect.

This action of the United States must be regarded with satisfaction. The postwar trend towards the writing of international treaties in multilateral conferences raises a number of problems which may not have been given sufficient study. As indicated above, one consequence is that the

II, p. 915.) The word "price" is more commonly applied to a negotiated transaction, the point at which a willing buyer and a willing seller meet. Within the context the word "compensation" would appear to be more appropriate. It would, however, seem hard to justify an argument that the agreement was intended to provide for payment of something that would be less than fair compensation.

The foregoing comment is based upon the provisional and unofficial English translation issued by the Department of State of the Bogota Economic Agreement which was signed in Spanish only. The problem herein referred to would be eliminated if the official translation should use the words "fair compensation" which it is submitted would be a better, if not so literal, translation of the Spanish "justo precio."

¹⁰ In this connection Article 8 prohibits one state from using coercive measures to obtain advantages from another.

resulting documents reflect a whole series of compromises. This in turn presents the great risk that the documents' meaning will not be clear or that it will mean different things to different people depending upon which clause is emphasized. If on top of this there develops a tendency such as appears with regard to the Economic Agreement of Bogota for nations to pile up reservations and unilateral declarations of what they conceive to be the meaning of different parts of the document, the orderly development of international law may be seriously impeded.

JOHN E. LOCKWOOD

THE RECOGNITION OF ISRAEL

The new State of Israel was proclaimed on May 14, 1948, in its capital city of Tel Aviv in the following terms:

We, the members of the National Council, representing the Jewish people in Palestine and the Zionist movement of the world, met together in solemn assembly by virtue of the national and historic right of the Jewish people and the resolution of the General Assembly of the United Nations, hereby proclaim the establishment of the Jewish State in Palestine, to be called Israel.

On May 15, within a few hours of this proclamation, President Truman issued from the White House a statement reading as follows:

The United States Government recognizes the Provisional Government as the *de facto* authority of the new State of Israel.

The Soviet Union followed on May 17 with a formal recognition of Israel through an exchange of letters by Mr. Molotov with Mr. Shertok, the Foreign Minister for Israel. The letter from Mr. Molotov stated:

Confirming receipt of your telegram of May 16, in which you inform the Government of the USSR of the proclamation, on the basis of the resolution of the United Nations Assembly of November 29, 1947, of the creation in Palestine of the independent State of Israel and make request for the recognition of the State of Israel and its provisional government by the USSR, I inform you in this letter that the Government of the USSR has decided to recognize officially the State of Israel and its Provisional Government.

The British Foreign Office gave out a statement on May 17 to the effect that Great Britain would not recognize Israel for the time being because it had not fulfilled the "basic criteria" of an independent state.

There has been much discussion by political theorists largely of an academic nature, concerning the essential conditions that entitle a new state to recognition. The *Institut de Droit International* in its resolutions on the subject adopted on April 24, 1936, laid down the following criteria:

The recognition of a new state is the free act by which one or several states take note of the existence of a human society, politically organ-

ized on a fixed territory, independent of any other existing state, capable of observing the prescriptions of international law and thus indicating their intention to consider it a member of the international community.

While these criteria are comprehensive and reasonable, it must be noted that they are not prescribed as conditions *sine qua non* for recognition. The fact is that each nation reserves to itself the exclusive right to determine its own conditions and reasons for according recognition to a new state. Even in the case of the League of Nations, and now the United Nations, it has been held that the admission to membership of a state not yet recognized by some of the members does not imply recognition by the latter. Such was the case of the Soviet Union before it was recognized by the United States.

Recent diplomatic practice has revealed some anomalous situations. New states have been recognized before they had begun to function, notably in the instance of Czecho-Slovakia, Lithuania, Armenia, and others. To reduce this extraordinary procedure to an absurdity, it is conceivable that recognition might even be accorded to an amorphous group of people seeking a separate political existence, though living on a fleet of vessels and dependent on the courtesy of occasional port facilities by the recognizing state.

In spite of the comments and theories of the writers on the subject of recognition the simple truth is that it is governed by no rules whatever. In the absence of a supranational state exercising supreme authority the act of recognition is political in nature and the prerogative of an independent sovereign state. Mr. Warren Austin, the American Ambassador to the United Nations, stated this truth clearly and effectively in reply to acrid criticism by the Syrian representative on the Security Council of the hasty recognition of the Provisional Government of Israel by President Truman. Mr. Austin then stated:

I should regard it as highly improper for me to admit that any country on earth can question the sovereignty of the United States in the exercise of that high political act of recognition of the *de facto* status of a state. Moreover, I would not admit here, by implication or by direct answer, that there exists a tribunal of justice or of any other kind, anywhere, that can pass upon the legality or the validity of that act of my country. There were some powers and some rights of a sovereign state that were not yielded by any of the members who signed the Charter of the United Nations, and this power to recognize the *de facto* authority of a provisional government was not yielded. When it was exercised by my Government, it was done as a practical step, in recognition of a change that had actually taken place.

In stating that the United States had "recognized the "Provisional Government of Israel" Mr. Austin was intimating that this act of recog-

nition was different from that of the Soviet Union. Mr. Molotov explicitly recognized the "State of Israel and its Provisional Government" while President Truman limited his act of recognition to the "Provisional Government as the *de facto* authority of the new State of Israel." The Soviet Union, acting as a kind of godfather, accorded a diplomatic baptism to the newborn infant and thus assumed by implication a benign interest and responsibility for the child's welfare. President Truman did not imply anything more than the acknowledgment of the child's existence and of its *de facto* guardians.

Whatever may have been the reasons and the incentives for the precipitate recognition of the Provisional Government of Israel by the United States, it was entirely in accord with American diplomatic policy and universal practice. It is true that there have been occasional aberrations from the general rule which have only served to accentuate the well established practice of nations. The Holy Alliance, for reasons of self interest, enunciated the doctrine of legitimacy as the test for recognition, and President Wilson, in his zeal for constitutional processes, sought to impose the test of legality on revolutionary governments in Central and South America. Secretary of State Stimson also asserted in the case of the puppet state of Manchuria created by Japan the doctrine of the non-recognition of states originating through violence. But it was Mr. Stimson who repudiated the Wilson doctrine of the nonrecognition of governments not chosen by constitutional means. In an address before the Council on Foreign Relations on February 6, 1931, Secretary Stimson restated the American policy concerning recognition as follows:

The practice of this country as to the recognition of new governments has been substantially uniform from the days of Secretary of State Jefferson in 1792 to the days of Secretary of State Bryan in 1913. . . . The general practice, as thus observed, was to base the act of recognition not upon the constitutional legitimacy of the new government but upon its *de facto* capacity to fulfill its obligations as a member of the family of nations. . . . The present administration has declined to follow the policy of Mr. Wilson and has followed consistently the former practice of the government since the days of Jefferson.

The practice formulated by Jefferson was concisely set forth in a letter to Pinckney in 1792:

We certainly cannot deny to other nations that principle whereon our own government is founded, that every nation has a right to govern itself internally under what forms it pleases, and to change these forms at its own will; and externally to transact business with other nations through whatever organ it chooses, whether that be a king, convention, assembly, committee, president, or whatever it may be.

The United States Government was constrained to depart somewhat from the policy which Mr. Stimson asserted had been "followed con-

sistently," when the Five Central American Republics entered into a regional pact in 1907, which was reaffirmed in 1923, agreeing that:

The Governments of the high contracting parties shall not recognize any other government which may come into power in any of the five Republics as a consequence of a *coup d'état* or of a revolution against the recognized government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country.

Secretary of State Hughes announced in 1923 that the United States would conform to this agreement in its policy of recognition of revolutionary governments in Central America, though the practical application of this policy in several instances proved embarrassing to all concerned.

Another most unusual situation was that created during the Second World War by Resolution Number XXII adopted December 24, 1943, by the Emergency Advisory Committee for Political Defense of the Inter-American Treaty signatories, recommending:

to the American Governments which have declared war on the Axis powers or which have broken relations with them, that during the actual World War they should not proceed to the recognition of a new government established by force, before consulting among themselves for the purpose of determining whether said government complies with the inter-American guarantees for the defense of the Continent, or before effecting an interchange of information regarding the circumstances which brought about the creation of said government.

Professor Fenwick has pointed out that "this exceptional procedure is of the nature of collective intervention without precedent in inter-American relations," and the same may be said of the Central American regional pact. In both instances, however, the United States was constrained to collaborate for reasons of high policy.

The recognition of the Provisional Government of Israel by President Truman, in the light of the general practice of the United States, was plainly justified. But its significance lies not so much in diplomatic or legal facts as in reasons of a practical and logical character. Being essentially a political act—not a judicial act—it is controlled in each instance by varying factors, even in some cases by purposes of intervention, or of pressure for special advantages in return for recognition. There have been many instances where recognition has only been accorded on the acceptance of special conditions by the recognized state. The United States withheld its recognition of the Soviet Union until the latter agreed to fulfill certain conditions.

There has been much needless confusion of thought concerning the meaning and the methods of recognition. The diplomatic precedents have been varied and misleading. The judicial decisions on the subject have likewise been conflicting and difficult to understand in many instances, because of the reluctance of judicial tribunals to trespass on what they

have considered to be the peculiar prerogative of the executive branch of government, when actually their main concern should have been to do justice. Nevertheless, some of the intricate and pressing legal problems presented by the nonrecognition of the Soviet Union by the United States compelled the courts, notably under the daring and wise leadership of Justice Cardozo, to assume much greater freedom and responsibilities in the doing of justice. The following excerpts, although in some respects of the nature of *obiter dicta*, are most enlightening and serve greatly to clarify the whole subject of recognition.

It may . . . be observed that the importance of recognizing governmental continuity, quite irrespective of considerations as to the existing form of a foreign government, or as to the human beings in control at any particular time, is well illustrated in this case where it is sought to deprive a foreign state forever of the opportunity to be heard in an effort to recover for the loss of property which belonged to the foreign state, *i.e.*, the Russian Government, "by whatever name called." *Russian Government v. Lehigh Valley Railroad Co.*; U. S. District Court of N. Y., 1919, 293 F. 133.)

In the absence of any government in Mexico, a fact to which the President's statement is conclusive upon us, the rule of paramount force in any particular district is provable as a matter of fact by evidence which in this case is neither left in doubt nor subject to possible inference to the contrary. (*O'Neill v. Central Leather Co.*; Court of Errors and Appeals of New Jersey, 1915, 87 N. J. Law, 552, 94 A, 789.)

Juridically, a government that is unrecognized may be viewed as no government at all, if the power withholding recognition chooses thus to view it. In practice, however, since juridical conceptions are seldom, if ever, carried to the limit of their logic, the equivalence is not absolute, but is subject to self-imposed limitations of common sense and fairness, as we learned in litigations following our Civil War . . . acts and decrees that were just in operation and consistent with public policy were sustained not infrequently to the same extent as if the governments were lawful. . . . These analogies suggest the thought that, subject to like restrictions, effects may at times be due to the ordinances of foreign governments which, though formally unrecognized, have notoriously an existence as governments *de facto* . . . a body or group which has vindicated by the course of events its pretensions to sovereign power, but which has forfeited by its conduct the privileges or immunities of sovereignty, may gain for its acts and decrees a validity quasi governmental, if violence to fundamental principles of justice and to our own public policy might otherwise be done. (*Sokoloff v. National City Bank*; U. S. Court of Appeals of N. Y., 1924, 239 N. Y. 158, 145 N. E. 917.)

Whether or not a government exists clothed with the power to enforce its authority within its own territory, obeyed by the people over which it rules, capable of performing the duties and fulfilling the obligations

of an independent power, able to enforce its claims by military force, is a fact, not a theory. For it, recognition does not create the state although it may be desirable. . . . We have an existing government (Russian Soviet) sovereign within its own territories. There, necessarily, its jurisdiction is exclusive and absolute. It is susceptible of no limitations not imposed by itself. This is the result of independence. It may be conceded that its actions should accord with natural justice and equity. If they do not, however, our courts are not competent to review them. They may not bring a foreign sovereign before our bar, not because of comity, but because he has not submitted himself to our laws. Without his consent he is not subject to them. Concededly that is so as to a foreign government that has received recognition. . . . But whether recognized or not the evil of such an attempt would be the same. (*Max Wulfsohn et al., Respondents, v. Russian Socialist Federated Soviet Republic Appellant*; U. S. Court of Appeals of New York, 1923, 234 N. Y. 372.)

The State Department . . . cannot determine how far the private rights and obligations of private individuals are affected by acts of a body not sovereign or with which our government will have no dealings. That question does not concern our foreign relations. It is not a political question, but a judicial question. The courts in considering that question assumes as a premise that until recognition these acts are not in full sense law. Their conclusions must depend upon whether these have nevertheless had such an actual effect that they may not be disregarded. In such cases we deal with result rather than cause. We do not pass upon what such an unrecognized governmental authority may do, or upon the right or wrong of what it has done; we consider the effect upon others of what has been done, primarily from the point of view of fact rather than of theory. . . . We give or deny the effect of law to decrees or acts of foreign governmental establishments in accordance with our own public policy; we open or close our courts to foreign corporations according to our public policy, and in determining our public policy in these matters common sense and justice must be considerations of weight. (*Russian Reinsurance Co. et al., Respondents, v. Francis R. Stoddard, Jr., as Superintendent of Insurance of the State of New York, et al., Appellants*; U. S. Court of Appeals of N. Y., 1925, 240 N. Y. Reports, 149.)

A decision of a Swiss tribunal regarding the extra-territorial effects of laws and acts of an unrecognized government is of special interest.

The non-recognition of the Soviet Government has the sole consequence that, in the field of international law, this government has no capacity for representing Russia in Switzerland, either in matters of public or private law. But this circumstance does not prevent the Russian law from existing and from having its effects. (*Hausner v. Banque Internationale de Commerce de Petrograd*, 1924; *Arrêts du Tribunal Fédéral Suisse*, Vol. 50, II, 507, 582.)

The *Institut de Droit International* dealt with the problem of the extra-territorial effects of the laws and acts of an unrecognized government in Article 17 of the Resolutions concerning recognition already cited.

The recognition *de jure* of a government implies the recognition of the competence of the judicial, administrative or other organs, and the acknowledgment of extra-territorial effects of their acts, in conformity with the rules of international law, and notably subject to the customary reservation with respect to public order, even if these acts had been accomplished before any previous recognition *de facto*. These extra-territorial effects, however, do not depend on the formal act of recognition of the new government. Even in the absence of recognition, they should be acknowledged by the competent jurisdictions and administrations when, considering especially the real nature of the power exercised by the new government, these effects are in conformity with the interests of right justice and of individuals.

The more one examines the diplomatic and judicial precedents the more one is puzzled to find any evidence of legal significance in either recognition or nonrecognition. Whatever the legal effects may be they are capable of being determined, by and large, by the normal judicial processes, without deferring to the executive authority.

The reason for existing confusion of thought concerning recognition is quite simple. The key to the solution of the problem, as suggested in the case already cited of the *Russian Government v. Lehigh Valley Railroad Company*, is to be found in the inexorable logic of human relationships which continue virtually unaltered throughout changes of governments and political systems. There can be no vacuum in human affairs. There is a fundamental principle of continuity which recognition or nonrecognition cannot vitally affect. The normal transactions of a community are carried on with only slight perturbations. Marriages are consummated, children are born, property is transferred or inherited, contracts executed, municipal services rendered, the courts function, and legal acts are attested and respected.

This principle of continuity likewise applies in the external affairs of a community. The peoples of various nations, even in time of war, find ways of traffic and communication, if only by radio. There can never exist a complete vacuum in international relations.

When, therefore, a change of government occurs, or a new political entity emerges, it matters little whether it is fully or partially recognized, either explicitly or impliedly. One thing is certain, its *de facto* existence cannot rationally be ignored. The problem, actually, is not whether recognition shall be accorded but rather the nature and the extent of recognition. The Soviet Union chose to accord full recognition to the new State of Israel, while Great Britain, though in contact with the *de facto* authorities in Israel, preferred to leave the question of the nature of recognition undetermined. The United States, on the other hand, contented itself with the bare acknowledgment of the Provisional Government as the *de facto* authority of Israel. What this act may imply will depend mainly on the course of events. American officials, whether consular or diplomatic, may

confer with Israeli officials or even enter into understandings and commitments of various kinds concerning American citizens and interests. Such undertakings may eventuate in formal diplomatic or treaty relations. The mode and extent of recognition is not prescribed by any rules of international law but by the sovereign free act of the United States according to the practical exigencies of the situation.

PHILIP MARSHALL BROWN

THE WORK OF THE UN INTERIM COMMITTEE

Whatever may have been the motives for which the Interim Committee (popularly misnamed the Little Assembly) was originally created, the work which it is now doing merits attention. It may well be that the studies on which the Interim Committee is now engaged will lead into the most practicable and fruitful field for improvement of the United Nations.

It will be recalled that, on motion of the United States, a resolution was adopted by the General Assembly on 13 November 1947 establishing an Interim Committee, on which each member of the General Assembly was to be represented, and which was to serve until the opening of the next regular session of the General Assembly. It was regarded as a subsidiary organ of the Assembly (under Article 22) and was to assist the Assembly by performing a number of functions, among which, in paragraph 2, were the following:

(c) To consider, as it deems useful and advisable, and report with its conclusions to the General Assembly on methods to be adopted to give effect to that part of Article 11 (paragraph 1) which deals with the general principles of cooperation in the maintenance of international peace and security, and to that part of Article 13 (paragraph 1a), which deals with the promotion of international cooperation in the political field. . . .

(f) To report to the next regular session of the General Assembly on the advisability of establishing a permanent committee of the General Assembly to perform the duties of the Interim Committee as stated above with any changes considered desirable in the light of experience. . . .

A resolution of 21 November 1947 asked the Interim Committee also to consider the problem of voting in the Security Council. Subcommittees have been created to study these questions and, on the basis of their reports, the Interim Committee will make recommendations for the General Assembly at its regular meeting (in Paris) in September.

The General Assembly, as well as the Security Council, has functions to serve with regard to the maintenance of international peace and security. It may (Article 11, paragraph 1) "consider the general principles of cooperation in the maintenance of international peace and security"; disputes may be brought before it under Article 35 or under Article 11, paragraph 2; it is to promote cooperation in the political field (Article 13,

paragraph 1a) ; it may make recommendations for the peaceful adjustment of any situation which it deems likely to impair the general welfare or friendly relations among nations (Article 14).

A very broad range of function was thus given to the General Assembly by the Charter, and it has, thus far, devoted little attention to the methods and procedures which it might employ in carrying out these functions. Primary responsibility in the field of peace and security had, of course, been given to the Security Council, and the Assembly could properly assume that the Council would take care of such matters. The failure of the Security Council to do so has forced the General Assembly into consideration of the means which it could develop, as part of its own function, for maintaining peace. Paragraph 2c of the Assembly resolution refers specifically to Article 11, paragraph 1 and to Article 13, paragraph 1a, and authorizes the Interim Committee to study the methods to be adopted to give effect to these provisions of the Charter. The Interim Committee soon found that it was necessary to consider these clauses in relation to other parts of the Charter and that, even to ascertain methods of action, consideration must be given to the whole problem.

In subcommittee 2, suggestions were offered: by Lebanon, for a permanent commission of conciliation; by Belgium, for transfer to the United Nations of the functions assigned to the League of Nations in connection with the General Act of 1928; and jointly by the United States and China, for broader consideration of the whole problem. Professor Philip C. Jessup, as rapporteur for subcommittee 2, summed up in a preliminary report (A/AC 18/48) the discussion and the possibilities of action. Two methods of procedure, according to this report, were possible; one would involve analysis of the entire system of pacific settlement; the other would be to take up and gradually develop each of the specific proposals which had been offered. These, the report indicated, were only slightly different aspects of the same study.

Various lines of consideration were suggested in the report. In connection with Article 33 of the Charter, study could be made of good offices, fact-finding commissions, panels from which commissions of conciliation could be chosen, a permanent commission of conciliation, types of disputes appropriate for regional settlement, the inter-relationship between arbitral and judicial settlement, et cetera. The report also suggests (referring to a Secretariat document (A/AC 18/33) that rules of procedure might be adopted by the General Assembly for handling matters referred to it, and that something analogous to a code of civil procedure might be adopted (either by multilateral convention or by Assembly resolution) to which states could voluntarily turn for standard procedures. The Secretariat document above mentioned raised other questions: are there some types of disputes which should properly go before the General Assembly and some which would properly belong to the Security Council? In handling

disputes brought before it, is the General Assembly bound to follow the same procedure as the Security Council under Chapter VI? What auxiliary bodies might the Assembly provide, and should they be composed of individual experts or governmental delegates?

It was obvious that such questions would require much study, and that the Interim Committee would not have the time for such a study. A number of background studies were requested from the Secretariat, some of which have appeared. The alternatives before the Interim Committee would seem to be recommendation of a few details, recommendation of further study, or a combination of both. If a wide study is to be made, extending over some time, it would seem advisable not to embarrass the conclusions of such a study by adopting specific items at the present time. It is to be hoped that the General Assembly will establish some sort of a continuing study of what is clearly the most important function of the United Nations—that of resolving difficulties between states in such a way as to prevent resort to force. The Interim Committee itself might be authorized to make such a study, or a body comparable to the International Law Commission could be created. The League of Nations found it necessary to establish various bodies to study problems relating to the maintenance of peace; it might be desirable for the United Nations to have a continuing body for this purpose.

The Interim Committee is considering (under paragraph 2f of the Assembly resolution) whether in the light of its own experience it should be considered as a permanent institution. The subcommittee assigned to this topic is inquiring as to the functions which the Interim Committee might perform. It encounters such questions as whether a permanent Interim Committee would amount to making the General Assembly a continuing body, or whether assignment of certain functions to it would amount to improper delegation of powers by the General Assembly. The discussion thus far seems to be in terms of a body which can prepare, rather than actually do, the work of the Assembly. Studies have been made of the methods by which the work of the General Assembly has in the past been prepared, and of useful methods which might be adopted for the future. Interest is concentrated upon the preparation of political and security matters, though suggestions have been made for assistance by the Interim Committee in preparing budgetary and administrative matters. An inquiry by the Dominican Republic as to the necessity of providing new credentials for delegates to the Interim Committee led into a study of the diplomatic status and procedures concerning permanent delegations.

Other subcommittees have been working on the Problem of the Independence of Korea, and upon the Problem of Voting in the Security Council. With regard to the latter, the procedure has been to examine a long list of possible decisions of the Security Council and the method of voting in each. The subcommittee has attempted to answer in each case whether

the question should be regarded as procedural or not, or whether the veto should be excluded in certain instances, whether or not the matter is procedural. The latter category would seem to be a new one, not found in the Charter. Recommendations concerning voting in the Security Council must of course be passed on to the Council itself; one may therefore be more optimistic concerning the other efforts of the Interim Committee than with regard to this one.

If one recalls the experience of the League of Nations, it was the Assembly which aggressively sought to develop procedures and means for forestalling the use of force between nations. The League found the effort difficult and slow, progress being made only by the shortest of steps. The political atmosphere of today being what it is, one cannot look for rapid progress, such as complete overhauling of the Charter. More hope is to be found in the unnoticed and un-newsworthy efforts of the Interim Committee to improve the methods of adjusting disputes. This work, which the General Assembly should continue, would be of an interest to international lawyers parallel to that which they now have in the International Law Commission.

CLYDE EAGLETON

THE EFFECT OF ADVISORY OPINIONS OF THE WORLD COURT

Despite the fruitful experience with the advisory opinions of the World Court, misunderstanding seems still to exist in some quarters as to their force and effect.

From 1922 to 1935 twenty-seven advisory opinions were rendered by the Court. As a matter of course they were received with the respect which the Court's authority commanded.¹ Naturally, one may say, this fact led to a disposition on the part of some people to overstate their legal significance. So great a lawyer as Politis allowed himself to say in 1928 that advisory opinions were "in reality no longer such," that they were "equivalent in the eyes of the Council, of public opinion, and of the interested parties to a judgment."² Such statements are not harmless exaggerations; they may be positively mischievous in their influence both on the Court and on the popular appreciation of its contributions.

Advisory opinions are precisely what they purport to be. They are advisory. Not legal advice in the ordinary sense, not views expressed by counsel for the guidance of clients, but pronouncements as to the law applicable in given situations formulated "after deliberation by the Court."

In advisory proceedings the Court functions within recognized judicial limitations. "To the extent to which it recognizes them to be applicable" it is "guided" by the procedural rules which are followed in contentious

¹ The history is traced in Hudson, *Permanent Court of International Justice, 1920-1942*, pp. 513-522.

² *Records of the Ninth Assembly of the League of Nations*, First Committee, p. 47.

cases (Article 68 of the Statute). An important difference between the two situations is, however, to be noted. In contentious proceedings there are parties before the Court, and they are bound by the judgment given; in advisory proceedings, there are no parties before the Court although, under Article 66 of the Statute, states and international organizations considered "to be able to furnish information on the question" may present written or oral "statements," and may "comment" on such statements made by others. Obviously, whether or not it appears to furnish information, no state or organization will be legally bound by the opinion rendered.

The procedure has not been substantially modified as a result of 1945 adaptation of the Statute. Capacity to request advisory opinions, previously conferred on the Assembly and Council of the League of Nations, has now been conferred on a number of the organs of the United Nations and on specialized agencies as well; but this fact has not changed either the procedure to be followed or the effect of the opinions given. States and organizations interested, whether they have appeared to "furnish information" or not, continue to have a freedom to determine upon the course which they will adopt with reference to the matter to which an opinion relates. To the extent to which the course adopted follows the law applicable, they will feel impelled to heed the authoritative exposition of that law in an opinion of the Court. Yet their course may be charted by practical rather than legal considerations. As the Court itself has recognized, even states bound by a judgment are "always free to dispose of their rights."³ In adjusting their differences, they can go outside the scope of the existing law.

This means, also, that states and organizations may commit themselves in advance to act upon and give effect to advisory opinions. Apart from the Statute and its provisions fixing the nature and the force of advisory opinions, they are free to obligate themselves as to the course which will be followed when an opinion has been rendered. Such an obligation had been undertaken by the British and French Governments with reference to the question relating to *Nationality Decrees in Tunis and Morocco* upon which the Court gave an opinion in 1923; the two Governments had "agreed that, if the opinion of the Court" upon the question "is that it is not solely a matter of domestic jurisdiction, the whole dispute will be referred to arbitration or judicial settlement."⁴ In Article 5 of the abortive Geneva Protocol of October 2, 1924, it was provided that certain advisory opinions of the Court should be "binding" on arbitrators handling disputes.⁵ These precedents led the writer to say several years ago:⁶

³ Permanent Court of International Justice, *Publications*, Series A, No. 24, p. 11; Series A/B, No. 46, p. 153.

⁴ Permanent Court of International Justice, *Publications*, Series C, No. 2, p. 254.

⁵ M. O. Hudson, *International Legislation*, Vol. II, p. 1883.

⁶ M. O. Hudson, *Permanent Court of International Justice, 1920-1942*, p. 513.

Of course it is possible that the parties to a dispute may have agreed in advance that an advisory opinion . . . given by the Court will be binding upon them; in such case, however, the binding force of the opinion is derived from the agreement itself.

A fresh manifestation of this freedom of states has now appeared. The Convention on the Privileges and Immunities of the United Nations of February 13, 1946, and the Convention on the Privileges and Immunities of the Specialized Agencies of November 21, 1947, include provisions that "the opinion given by the Court shall be accepted as decisive by the parties" between whom had arisen the difference to which the opinion relates. The provision does not effect any modification of the procedure to be followed by the Court; nor does it vary the force given by the Statute to the opinion rendered. It merely lays out an obligation between the states parties to the particular convention as to the course which they will follow after an opinion has been rendered. While they are not bound by the opinion as such, they agree to treat it as decisive of the law applicable.

This may prove to be a useful development. It is certainly not to be discouraged. It may result in greater usefulness of the Court, and in an increase of its authority.

This view is not reflected, however, in some of the current discussions of the subject. The provisions in the two Conventions referred to have been termed "revolutionary"; the procedure has been condemned as "circumventing" the provision of the Statute that "only states may be parties in cases before the Court"; and it has been said to "weaken" this limitation in the Statute. It is submitted that such statements fail to take account of the distinction between the procedure before the Court and the action which states may take after the Court has rendered an opinion.

MANLEY O. HUDSON

CURRENT NOTES

THE JAPANESE INTERNATIONAL LAW ASSOCIATION

The JOURNAL is glad to publish information received concerning the activities of the Japanese International Law Association. For many years prior to December, 1941, there was the closest collaboration between the American Society of International Law and the Japanese working for the same purposes. A regular exchange was established between the journals published by the two associations. The information now at hand indicates that the publication of the *Japanese Journal of International Law and Diplomacy* was continued throughout the war. Arrangements are being initiated to exchange the publications issued in the war period. The editors of each would be greatly interested to read the views expressed in their respective columns concerning international questions which arose during the war.

The fiftieth anniversary of the founding of the Japanese Association occurred in 1946 but its celebration was postponed until this year. It took place April 2-4 in Tokyo University and had for its general subject "Japan and Post-War World Organization." The first day was devoted to international politics, diplomacy, and economics. Reports were presented on the subjects of "Philosophy of Peace," "Historical Development of World Peace Organization," "The Charter of the International Trade Organization," and "The Bretton Woods Plan." The second day was devoted to international law and reports were presented on the subjects of "The Second World War and Criminality of War" and "The Future of the Security Council of the United Nations." Public lectures in commemoration of the fiftieth anniversary of the organization were given on the third day of the meeting. On the convening of this meeting a congratulatory address was made by the Prime Minister of Japan.

Notwithstanding the devastation of war, the Association claims about 250 members in various circles in Japan. It expects and was urged by the Prime Minister to start afresh and to play an important role in developing Japan anew as a peace-loving and cultural nation. The American Society of International Law is prepared to extend the hand of friendship to the Japanese Association of International Law in its efforts to recover for its country the world's trust as a law-abiding nation and to contribute to international peace and security.

GEORGE A. FINCH

Editor-in-Chief

FAO FISHERIES MEETING AT BAGUIO

Specialized Agencies of the United Nations may have more direct bearing upon domestic affairs than most businessmen or lawyers of the United States realize. Except for some State and Interior Department and United Nations officials, who were themselves involved, and a very few scattered and exceptionally alert fishery people, it is improbable that the fact that the Food and Agriculture Organization had called an international fishery meeting at the summer capital of the Philippines for February 23 to 28, 1948, attracted any attention in this country. Yet this meeting may have serious significance for every branch of the ocean fishing industry of the nation, Atlantic, Gulf, or Pacific, and perhaps for other industries.

At its Geneva meeting, held from August 25 to September 11, 1947, the fishery division, one of three branches of FAO, divided the ocean waters of the world into several grand regions (the Northwest Pacific and Northeast Atlantic alone being omitted) and proposed that an international fishery research council be organized for each of such regions to function under the auspices of FAO. The primary objective purported to be to increase fishery food production.

The Southwestern Pacific and Eastern Indian Ocean region was selected for the initial proposal, and all members of FAO who had manifested interest were invited to send delegations to Baguio. India, Burma, the Netherlands, France, Italy (though not in fact involved), China, the Philippines, the United Kingdom and the United States responded. SCAP sent an observer. UNESCO had a representative present. It should be noted that all of the several delegations were composed of either civil servants or biologists except that of the United States which contained a lawyer who had, however, been appointed because of his fishery connections.

The FAO staff submitted a proposal for a constitution for the creation of a Research Council to be composed of a representative of each nation which should become a member of the new organization. After several days of discussion and exceedingly conscientious work on the part of various committees, on most of which every delegation was represented, the term Constitution was changed to Agreement for the Establishment of the Indo-Pacific Fisheries Council. The document itself was completely rewritten and the revision unanimously approved for submission to all interested nations. Instead of setting out specific water boundaries in defining the area of operations, general language was employed which envisaged such regional waters as were of special interest to the nations and dependencies from India around to China and the adjacent islands, also Australia should that commonwealth be interested. Biological, oceanographic, and technological provisions were also inserted but these had little bearing upon our American fisheries except as Americans might de-

sire to participate in Indo-Pacific fisheries. Because of the historical, political, and industrial background of this particular global region, a present considered the final proposal to be meritorious.

Points which should be noted are: (1) the final drafting of this international document would have been entrusted wholly to laymen except for accident; (2) the proposal contemplates direct FAO participation in the work of the Council at FAO expense, though in a limited manner; (3) the operation of FAO follows patterns similar to those of a government bureau and continued observation is warranted to see whether, like government bureaus, FAO will seek to increase its jurisdiction, appropriation and staff; (4) the terms of the proposed agreement extend beyond the single field of cooperative research; (5) should similar agreements be proposed as to regions in which the United States fisheries industry operates directly it should be seriously considered whether the FAO procedure is or is not preferable to the bilateral or multilateral treaty method successfully pursued by the United States in the Northeast Pacific; (6) may FAO procedure initiated in the field of fisheries be followed in other fields.

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THE INTERNATIONAL ORGANIZATION OF THE RED CROSS AND THE LEAGUE OF RED CROSS SOCIETIES

There is widespread misunderstanding of the international organization of the Red Cross. The statement in this regard in Art. I of the Statute of the International Red Cross, adopted at the XIIth International Conference of the Red Cross in the Hague, 1938, is as follows:

The International Red Cross comprises the National Societies, the International Committee of the Red Cross and the League of Red Cross Societies. The supreme governing body of the International Red Cross is the International Conference. The Conference is composed of delegates of the Powers signatory to the Geneva Convention, and of delegates of the International Committee of the Red Cross and of the League of Red Cross Societies.¹

I. *International Committee of the Red Cross*

Red Cross history, as we know, began with the inspired and generous initiative of Henri Dunant, to whom we owe the first Geneva Convention in 1864 "for the amelioration of the condition of wounded soldiers in the field," and the creation of The International Committee of the Red Cross—an independent organism—composed of Swiss citizens only. This body is the guardian of the principles of the Red Cross; it watches over the o

¹ The next meeting of the International Red Cross Conference will be held in August 1948 in Stockholm.

servation of the Geneva Conventions and acts as a neutral intermediary, more especially in case of war.

Article 4 of the Statutes of the Committee defines as follows its present tasks:

“Art. 4. The I.C.R.C. shall have the following aims and objects, in particular:

- (a) To work for the maintenance and the development of relations among national Red Cross Societies;
- (b) To maintain the uniform and fundamental principles of the Red Cross Institution, namely: Impartiality, political, religious and economic independence, the universality of the Red Cross and the equality of the national Societies;
- (c) To recognize every national Society, newly established or reconstituted;
- (d) To be a neutral intermediary, the intervention of which is recognized to be necessary, especially in case of war, civil war, or internal troubles;
- (e) To take cognizance of every complaint regarding alleged contraventions of the International Conventions, and in general to consider all questions the examination of which by a specifically neutral body is necessary;
- (f) To coördinate efforts for bringing relief to victims of war and of the evils which are the consequence of war and civil calamity;
- (g) To promote the instruction of a staff and the preparation of supplies, necessary to ensure the work of the Red Cross in time of war, in coöperation with the national Red Cross Societies and the military Medical Services of the States;
- (h) To perform all such duties as are incumbent upon it under the International Convention;
- (i) To deal in general with all matters concerning the relations between Red Cross Societies, in time of peace and in time of war, and connected with all action on behalf of prisoners of war.”

To these provisions it is desirable to add those of the International Convention relative to the Treatment of Prisoners of War (1929) which specially relate to the I.C.R.C., as for example the provision stipulating that a Central Agency of information regarding prisoners of war shall be established; and other provisions of greater importance, defining the International Committee's right to undertake any humanitarian work for the protection of prisoners of war with the consent of the belligerents concerned. Thus, during the last World War, the International Committee was enabled, with the assistance of all the national Red Cross Societies, to concern itself with the fate of sick and wounded soldiers, prisoners of war, military and civilian internees, civilian populations in occupied territories, civilians separated from their next-of-kin by battle fronts; and to see that the provisions of the Geneva Conventions were observed—provisions which would facilitate the exchange of news and information concerning prisoners

of war and the forwarding of material and intellectual relief, within the limits agreed to by the belligerents.²

II. *National Red Cross and Red Crescent Societies*

The creation of national Red Cross or Red Crescent Societies was almost contemporary with the founding of the International Committee of the Red Cross itself, and represents the second link in the chain of the international Red Cross Organization. The task of the national Societies is to develop in each country those multiple welfare activities which have made the Red Cross what it is: a moral and social force operating for the well-being of suffering humanity. The national Societies constitute the real framework of the international Red Cross organization. These Societies are not only valuable auxiliaries to the armed forces in time of war; in time of peace also they exercise their activities in any field where their help is needed to alleviate human suffering and to increase human well-being.

The four principal directions in which these activities are developing are: (1) Relief to sufferers from misfortune and victims of disaster or accident (relief in case of public calamity, first aid services on highway, in the mountains, on sea beaches and waterways, in mines, etc.). (2) Improvement of public health (installation of hospitals) and out patients clinics, health propaganda, prophylaxis and campaigns against epidemic and endemic diseases, mother and child protection, blood transfusion, physical and social rehabilitation, etc. (3) Activities of nurses, nurses' aides, voluntary auxiliaries and social assistants. (4) Expansion of the Junior Red Cross—where future active members of the Red Cross are trained for their great task—whose program comprises three main sections: (a) Instruction in Hygiene and First Aid; (b) All forms of mutual assistance among children as well as on the national or international plane; and (c) Development of the spirit of international comprehension.

III. *The League of Red Cross Societies*

And, finally, the League of Red Cross Societies is the last link in the chain of this international organization. It is the Federation of the national Red Cross Societies of the world; it is the organism which represents them on the international plane and is the guardian of their spiritual and material interests. We could call it "The Red Cross Parliament," where each national Society can obtain a hearing, express its views, work for mutual collaboration and help, and make of the Red Cross a living reality, operating for the welfare of the whole of suffering humanity. The

² For further information on the work of the International Committee of the Red Cross, see *Revue internationale de la Croix-Rouge*, published by the International Committee at Geneva.

gasks incumbent upon the League are indicated in its Articles of Association. More especially, it is stated in Article 3 that:

"The objects of the League are to encourage and facilitate at all times Red Cross action for the relief of suffering humanity. It shall for this purpose:

- (1) Encourage and promote in every country the establishment and development of a duly authorised voluntary national Red Cross Society working in accordance with the principles adopted by the League of Red Cross Societies.
- (2) Act as a permanent organ of liaison, coördination and study between the national Red Cross Societies, with a view to assisting them in the organization and exercise of their activities, both national and international.
- (3) Collaborate in all aspects of their activity with the Societies in the improvement of health, the prevention of disease, and the mitigation of suffering.
- (4) Be the guardian of the integrity of its members and the protector of their interests.

At present, 65 national Red Cross and Red Crescent Societies of the world are members of the League;³ and its strength lies in this universality.

The member Societies of the League count about 70 million adult members and 30 million Juniors. The League's international, federative and representative character is definitely asserted by the composition of its directive organs, which are the Board of Governors and the Executive Committee.

The Board of Governors might be described as the General Assembly of the League and is its highest authority. It is composed of representatives—designated Governors—of all national Red Cross Societies members of the League. In normal times, the Board meets every two years; its present Chairman is Basil O'Connor, the President of the American National Red Cross. The Executive Committee, which exercises the powers and duties conferred on the Board of Governors during the intervals of the latter's meetings, is convened as a general rule every six months. At present it comprises the Chairman of the Board of Governors, an Honorary Vice-Chairman, Mr. G. A. Bohny, Chairman of the Swiss Red Cross, and four Vice-Chairmen: the Chairman of the Brazilian Red Cross, Dr. Vivaldo Palma Lima Filho; the Chairman of the Executive Committee of the British Red Cross, the Rt. Hon. Lord Woolton; the Chairman of the Chinese Red Cross, Dr. Monlin Chiang; and the Chairman of the French Red Cross, Prof. G. Brouardel. In addition there are the representatives of twelve Red Cross and Red Crescent Societies: the Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., Australia, Belgium, Canada, Czechoslovakia, Ecuador, Greece, Italy, Mexico, Poland, Sweden, Turkey.

³ Only one member Society of the League does not bear the title of Red Cross or Red Crescent: the Red Lion and Sun Society of Iran.

So that the bonds uniting the Red Cross Societies of the world to each other and to the League may become an active reality, the League does its utmost to foster closer coöperation on the part of the national Societies. For this purpose, it is necessary that frequent exchanges of views should take place and three different means are employed with that object in view:

(a) Conferences. The League frequently convenes conferences of delegates of the various Red Cross Societies in order to examine matters affecting their work and to adopt decisions which the Secretariat of the League puts into operation. These conferences often bring together representatives of the Red Crosses of one region only, whose interests are especially affected.⁴ Other Conferences are of a more general nature and deal with technical matters of concern to all Red Cross Societies.

The League has often taken steps to convene, or has helped to organize, international technical conference to deal with matters approximating to its own objects and has taken part in international congresses and meetings, the agenda of which includes subjects covered by its general purposes.

(b) Missions. There can be no doubt that personal contacts give the League its best opportunities for fulfilling its primary purpose, that of serving as a connecting link between the Red Cross Societies. The missions carried out by the members of the League Secretariat to Societies the world over are occasions for the examination, with the managing officers of the national Societies, and sometimes the solution, of questions of direct interest to the life and work of the national Societies.

From 1939 to 1945, that is to say when communications were most difficult, members of the Secretariat carried out more than two hundred missions to the Societies of about forty different countries. In normal times, of course, these missions are more frequent.

(c) Study visits. The study visits of delegates of national Societies help very effectively to maintain and develop the indispensable coöperation between the national Societies and their international federation. These visits to the League headquarters allow the delegates to become familiar not only with the work of the League, but with the work carried out by other national Red Cross Societies, for which purpose all necessary documents are compiled.

⁴For instance: Two Regional Red Cross Conferences took place in 1947. In February 1947, the Vth Pan-American Regional Red Cross Conference was held at Caracas, Venezuela. 19 National Societies were represented by more than 100 delegates who passed 48 resolutions touching upon all aspects of the work of the Red Cross. In September 1947, the European Regional Conference of Red Cross and Red Crescent Societies met at Belgrade, Yugoslavia. Its principal object was to study the relief problems which face the Red Cross in the international field and more particularly Societies of the countries victims of the war. 18 National Societies took part in this Conference which adopted various resolutions.

The Secretariat of the League

Its organization, duties and activities

The Secretariat, which is directed by Mr. de Rougé, Secretary General, with the assistance of M. G. Milsom, Under-Secretary General, and M. Henry W. Dunning, Executive Secretary, is the organ which carries out the intentions and policy of the League. At the present time the Secretariat employs about eighty persons drawn from fourteen nationalities. It is, therefore, a distinctly international body.

To implement the purposes of the League, the Secretariat has established a Bureau to represent each of the more important fundamental activities of Red Cross Societies. Each Bureau has specific functions designed to assist any Society, and those functions currently available are listed below.

I. Bureau of Organization and Development

The Bureau of Organization and Development is a source of advice for national Societies on administrative matters. It also serves to stimulate the newer and smaller Societies by encouraging them to increase the scope of their services. Close coördination exists between this Bureau and the Bureau of Information and Publications.

The Bureau of Organization and Development will:

(1) Make a comparative study, when requested, of problems of internal organization, of the correlation of services and the administrative machinery of a Society, based on successful methods adopted by other Societies to increase their efficiency.

(2) Provide technical advice on specific problems relating to the establishment or expansion of the services offered by a Society, based on records kept by the Secretariat of similar experiences among member Societies.

(3) Make suggestions of new types of activities which can be undertaken by a Society as well as the methods of operation.

(4) Send technical experts, in certain circumstances, to help a Society in organization problems.

(5) Receive visitors from Societies wishing to avail themselves of study and research at League headquarters.

(6) Arrange, when possible, the exchange of administrative and technical personnel for study purposes between sister Societies.

(7) Assist in organizing Regional and International Red Cross Conferences.

II. Relief Bureau

The Relief Bureau was established to facilitate the exchange of relief between national Red Cross and Red Crescent Societies and to maintain contacts between them towards this end.

The Relief Bureau will:

- (1) Provide member Societies with reports and detailed lists of the needs of civilian populations in stricken countries, particularly the requirements of sister Red Cross and Red Crescent Societies to meet those needs.
- (2) Advise donor Societies of the best means of shipment of relief in kind to beneficiary Societies, and if necessary arrange for trans-shipment of the supplies.
- (3) Purchase relief supplies for the account of donor Societies and ship the supplies to the beneficiary Societies selected by the donor.
- (4) Obtain from beneficiary Societies receipts and reports of distribution for donor Societies.
- (5) Purchase for National Societies supplies and material needed for their own programs.

Periodical publication: "Coördinated Relief Bulletin" (monthly).

III. *Health Bureau*

The Health Bureau has as its aim assistance to national Societies in the operation, development and perfection of their medical and first aid activities. It receives, correlates and analyses the action of national Societies in the field of public health and maintains liaison with other international health organizations.

The Health Bureau will:

- (1) Provide national Societies with reports of experience acquired by sister national Societies in the field of public health, particularly as concerns: (a) improvement of health conditions, (b) nutrition, (c) the campaign against tuberculosis in all of its forms, (d) rehabilitation of invalids, (e) campaign against rheumatism.
- (2) Effect liaison between the health services of national Societies engaged in a mutual campaign against epidemics.
- (3) Advise national Societies of the latest technical progress in any medical field in which they are interested.
- (4) Provide national Societies with articles for their health publications.
- (5) Assist national Societies to improve and develop their first aid and blood transfusion services.
- (6) Provide national Societies with documentation on certain medical and scientific problems.

IV. *Nursing and Social Service Bureau*

The Nursing and Social Service Bureau endeavors to assist national Societies: (a) to have available an adequate number of well prepared nurses and nurses' aides for service in time of war and calamities, (b) to par-

ticipate wherever needed in the development of Red Cross Schools of Nursing, the development of Public Health Nursing Services, the provision of an adequate supply of trained nurses and in the establishment of adequate working conditions for them, (c) to develop the teaching of Home Nursing in all classes of the community and to assist in popular health education.

The Nursing and Social Service Bureau will:

- (1) Assist national Societies in the organization of their trained nurses and nurses' aides services.
- (2) Provide national Societies with studies and reports on special aspects of Red Cross nursing.
- (3) Provide, in a limited number of cases, translations of nursing textbooks.
- (4) Send, when requested, under certain conditions, field representatives to national Societies to offer expert advice.
- (5) Arrange for study visits to League headquarters.
- (6) Arrange for study tours of nurses.
- (7) Grant scholarships for basic training in nursing or for post-graduate studies.
- (8) Provide, within the limits of funds donated for this purpose, medico-social assistance to nurses who are suffering in health as a result of war.
- (9) Provide national Societies with information on most recent developments in the field of social service.

Periodical publication: "Information Bulletin for Red Cross Nurses" (published three times yearly).

V. Junior Red Cross Bureau

The Junior Red Cross Bureau is the liaison between Junior Red Cross Sections of national Societies and the international contact of the Sections with organizations concerned with education, youth, child welfare and international coöperation.

The Junior Red Cross Bureau will:

- (1) Provide technical advice to national Societies on the organization and development of Junior Red Cross Sections.
- (2) Arrange for the exchange of international school correspondence albums.
- (3) Provide articles and photographs for Junior Red Cross publications.
- (4) Issue technical publications and publicity material for the use of national Sections.
- (5) In certain instances, on request, send field representatives to study Junior Red Cross Sections and make recommendations for their improvement.

(6) Arrange for study visits to League Headquarters for Junior Red Cross representatives.

(7) Assist in the organization of international camps and regional conferences.

(8) Organize international competitions.

Periodical publications: "Material for Editors of Junior Red Cross Magazines," "School Correspondence Secretaries' Bulletin," "Newsletter" (monthly).

VI. *Bureau of Information and Publications*

The Bureau of Information and Publications, working in close collaboration with the Bureau of Organization and Development, will:

(1) Provide national Societies with material for Red Cross and non-Red Cross publications on all phases of Red Cross activities.

(2) Provide national Societies with copies or reproductions of posters and publicity material successfully used by sister Red Cross Societies.

(3) Provide national Societies with copies of special publications issued by sister Red Cross Societies.

(4) Provide national Societies with special or prototype radio programs and lectures on Red Cross activities.

(5) Provide on loan to national Societies cinematographic films of Red Cross activities.

(6) Advise national Societies on publicity means of stimulating fund raising, membership campaigns and public interest in general or specific Red Cross activities.

Periodical publications: "Information Service" (semimonthly) and "The Red Cross World" (quarterly).

VII. *Office of International Relations*

This Office was set up in 1947 and charged with ensuring the relations of the League with international non-Red Cross, governmental and non-governmental organizations, as well as providing the representation of the League at meetings of these Organizations and keeping the national Societies of the Red Cross and Red Crescent regularly informed of their activities likely to be of interest to them. The Office of International Relations has maintained close relations with the United Nations and its specialized agencies such as UNESCO, the Interim Commission of the World Health Organization, the Preparatory Commission of the International Refugee Organization, the Food and Agriculture Organization, the International Children's Emergency Fund and the European Economic Commission. The League is in constant touch with numerous international non-governmental organizations.

The Secretariat of the League also includes an Office of Conferences, administrative and finance services. The Bureau of Organization and Development coordinates the activities of these various departments.

The above thus is an outline of the international organization which labors unceasingly to propagate the action and spirit of the Red Cross throughout the world.

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RESEARCH IN INTERNATIONAL LAW AND THE FULBRIGHT ACT

The Fulbright Act,¹ passed by the Congress on August 1, 1946, may conceivably open up possibilities for satisfying the urgent need of international lawyers for greater availability of source material illuminating the practice of states.

While the total amount of funds which may eventually become available from the disposal of United States surplus property abroad is not yet determined, it appears that a varying amount will be available in the following countries: the United Kingdom, Australia, New Zealand, Finland, the Netherlands, Denmark, Belgium, France, Czechoslovakia, Austria, Hungary, Poland, Italy, Greece, Turkey, Egypt, Iran, China, the Netherlands East Indies, the Philippines, Siam, and Burma. These funds, according to a leaflet issued by the Department of State in November, 1947, may be drawn upon in order to provide financial assistance

... to United States citizens for study, research, teaching at all levels, and other educational activities in schools and institutions of higher learning in the participating countries. This assistance may take the form of payment for transportation, tuition for students, teachers' salaries, maintenance, and incidental expense. All expendi-

* League of Red Cross Societies; Director of Information.

¹ The Act authorizes the Secretary of State "to enter into an executive agreement or agreements with any foreign government for the use of currencies, or credits for currencies, of such government acquired as a result of such surplus property disposals, for the purpose of providing, by the formation of foundations or otherwise, for (A) financing activities of or for American citizens in schools and institutions of higher learning located in such foreign country, or of the citizens of such foreign country in American schools and institutions of higher learning located outside the continental United States, Hawaii, Alaska (including the Aleutian Islands), Puerto Rico, and the Virgin Islands, including payment for transportation, tuition, maintenance, and other expenses incident to scholastic activities; or (B) furnishing transportation for citizens of such foreign country who desire to attend American schools and institutions of higher learning in the continental United States, Hawaii, Alaska (including the Aleutian Islands) Puerto Rico, and the Virgin Islands, and whose attendance will not deprive citizens of the United States of an opportunity to attend such schools and institutions." An Act to amend the Surplus Property Act of 1944 to designate the Department of State as the disposal agency for surplus property outside the continental United States, its territories, and possessions, and for other purposes. Public Law 584. U. S. Statutes at Large, Vol. 60, Part 1, Ch. 723, p. 754.

tures must be made in foreign currency and, therefore, transportation and other expense can be defrayed only where they are payable in foreign currency.

Students and scholars will thus have opportunities to pursue studies and individual research projects in a great variety of countries. It is felt, however, that it would be desirable to explore, in consultation with the Department of State, the possibilities that may exist or that may be created under existing legislation for utilizing available funds for projects of considerable magnitude requiring substantial funds and teams of research workers. The profession has long felt the need for digests of foreign office materials of other countries in the form of the digests of Moore and Hackworth and of decisions of national and international tribunals. It will be recalled in this connection that at its second session the General Assembly of the United Nations adopted the Statute of the International Law Commission.² Article 24 of the Statute charges the Commission to:

... consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning State practice and of the decisions of national and international courts on questions of international law, and shall make a report to the General Assembly on this matter.

The importance of such digests and collections has been frequently stressed. It may be sufficient to refer to one or two recent instances. Dr. Lauterpacht, reviewing Judge Hackworth's *Digest of International Law*, noted that "it must be a matter of regret that no similar record of the practice of other countries is as yet available." He then went on to say:³

As it is, the treatment of various questions of international law in monographs and otherwise tends to be one-sided inasmuch as it is based largely on the practice of the United States. Until the Foreign Offices of Great Britain and France—and also of some of the smaller countries such as Belgium, Holland and Sweden—have followed the lead of the State Department in this matter we cannot hope for a more comprehensive and accurate treatment by writers of questions of international law than is the case at present. It is also clear that from the point of view of the requirements of the staffs of the Foreign Offices and of the diplomatic and consular representatives of the countries concerned, the encouragement of publications of this kind is desirable and, in the long run, highly economical. It would make unnecessary the compilation, amidst some haste, of special memoranda bearing on situations as they arise in particular cases, and there is no doubt that other Government Departments would greatly benefit from the existence of a semi-official publication of this nature.

The particular importance of British practice has been stressed by Professor H. A. Smith who expressed the hope "that provision may be made

² Doc. A/504, 20 November, 1947, p. 8.

³ 22 *British Year Book of International Law* (1945), p. 310.

from public or institutional funds for an adequate presentation of the full record of British action in matters touching the law of nations."⁴

Presumably the compilation of digests such as are envisaged above could not be undertaken without the coöperation of the Foreign Offices concerned. It would not be surprising to find that in some, or perhaps most, cases the Foreign Offices would desire to do the job themselves even if, indeed, they were at all disposed to undertake it. Could they be induced to consider such projects? Could Fulbright funds be made available to them for such purposes? The magnitude of the task should not be underestimated for, as Professor Smith observed, "a complete record of British activities in matters of international law could only be undertaken by a group of editors working with a large staff of assistants, and the result of their labors would be a library rather than a book."⁵ On the other hand it would be difficult to underestimate the benefits that would accrue from such a British digest to students and practitioners of international law. A work of this nature would be an important step in promoting a more balanced view of international law as suggested by Dr. Lauterpacht.

In the matter of collecting, digesting, and publishing decisions of municipal courts, coöperation of foreign offices would not be necessary. The reports of foreign courts are available in this country where in fact some preliminary work could be done if funds were available. However, as the Fulbright funds are available only for research abroad, the main job would have to be undertaken there. Dr. Lauterpacht's *Annual Digest and Reports of Public International Law Cases* might serve as a model. The aim then would be to collect cases in the different countries where funds are available, make the necessary translations, and channel the reports to an editor who would assume final responsibility for selection and publication. One or two "pilot" projects, say in Great Britain or France, could be undertaken as a start. Teams of research workers, trained in international law, would have to be sent to those countries and preferably work under the direction of a distinguished international lawyer or a qualified institution in that country. The task of collecting decisions should be approached in stages working backward from 1919 when the *Annual Digest* began and covering a period of, say, ten years at a time. It is not clear from the text of the Fulbright Act whether funds could be made available for publication of such digests of court decisions.

Be that as it may, the Fulbright Act seems to offer some promise of fulfilling to a substantial extent a long cherished desire of the profession for greater availability of source materials in international law.

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⁴ H. A. Smith, *Great Britain and the Law of Nations*, Vol. 2 (1935), Pt. 1, p. vi.

⁵ H. A. Smith, *Great Britain and the Law of Nations*, Vol. 1 (1932), p. x.

MISCELLANEA

At the meeting of the Executive Council of the Society on April 24, 1948, Professor John Brown Mason suggested the desirability of providing gift subscriptions for teachers and educational institutions in foreign countries unable to pay for subscriptions because of currency regulations. The Secretary mentioned the lack of any funds of the Society available for this purpose. Mr. Arthur K. Kuhn thought that members of the Society might be willing to subscribe to a special fund to be used for this purpose. It was voted to publish a notice concerning this matter in the next issue of the JOURNAL. Members interested in the matter should communicate with the Secretary, Mr. Edward Dumbauld, at the office of the Society.

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The Fourth Congress of the Egyptian Society of International Law was held in Cairo in May. Papers were read concerning the codification of international law, human rights, citizenship, and particularly the right of residence and work or the practice of a profession in Egypt, now in course of being regulated by treaty arrangements between Egypt and other countries. The Congress was concluded with a dinner at Shepherd's Hotel at which there were no speeches.

* * *

An Institute on International Law will be held at the Law School of the University of Michigan in July and August, 1948. Seminars for law students on various problems of international law will be given by Lawrence Preuss and James Brierly and the latter will give a series of public lectures on "The Sovereign State in International Law." Finally week-end lecture-discussions for law students and practitioners will be held at which Preuss, Brierly, and also Yuen-li Liang, Charles S. Rhyne, William Bishop, Charles Fahy, Max Rheinstein and Hersch Lauterpacht will appear.

* * *

An Institute on the Teaching of International and Comparative Law for law school teachers will be held at the New York City Bar Association from August 23 to September 4, 1948. The first week will be devoted to international law and the second to comparative law. During the first week Philip Jessup, Green Hackworth, and Edwin Dickinson will officiate as also Robert Jackson, James Brierly, Alger Hiss, Frederic K. Nielsen, Durward Sandifer, Josef Kunz, and Clyde Eagleton. Further information may be had from Philip W. Thayer, 1906 Florida Avenue, Washington 9, D. C.

* * *

The Committee on Awards of the American Political Science Association has again announced, in the name of the Wendell Willkie Memorial Building, an award for the best publication between October 1, 1947, and Sep-

tember 30, 1948, in the field of international relations. Six copies of the competing work should be placed in the hands of Dean Payson S. Wild, Jr., Harvard University, by October 1, 1948.

* * *

Under the so-called Fulbright Act (Public Law No. 584) extensive opportunities are now open to American students of international law and relations who wish to study in foreign countries (and foreign students to study in the United States). Inquiries for further information may be addressed to the Institute of International Education, 2 West 45th Street, New York 19, New York.*

* * *

The appearance of a new review of political science in which considerable attention will be devoted to international problems should be of interest to readers of the JOURNAL. Publication of *The Western Political Quarterly*, as the joint organ of the Western Political Science Association and the Pacific Northwest Political Science Association, was begun at the University of Utah in June. Articles on "Withdrawal from the United Nations" and "The Free Territory of Trieste," by Hans Kelsen and Josef Kunz, respectively, have already appeared in the new journal.

* * *

Students of international law will rejoice over the continuation of the Treaty Series the publication of which was begun by the League of Nations, or rather its resumption, after an all-too-long interruption, by the United Nations. The format and general treatment of subject matter remain substantially the same, and every effort is to be made to bridge the gap, "avoiding any breach of continuity in a system which has functioned efficiently for many years."

P. B. P.

* See also Current Note above, p. 644.

NOTES ON LEGAL QUESTIONS CONCERNING THE UNITED NATIONS

BY YUEN-LI LIANG *

THE PALESTINE COMMISSION

The problem of Palestine was brought before the United Nations in a letter of 2 April 1947 from the United Kingdom delegation to the Acting Secretary-General of the United Nations.¹ In the letter it was requested that the question of Palestine be placed on the agenda of the second regular session of the General Assembly and further that a special session of the General Assembly be called for the purpose of constituting and instructing a Special Committee to prepare for the consideration of the question by the General Assembly.

The First Special Session of the General Assembly which met between 28 April and 15 May 1947 established a Special Committee of eleven members² to have "the widest powers to ascertain and record facts, and to investigate all questions and issues relevant to the problem of Palestine," and also "to prepare a report to the General Assembly and to submit such proposals as it might consider appropriate for the solution of the problem of Palestine."³

The United Nations Special Committee on Palestine (UNSCOP) worked intensively from 26 May to 3 September 1947 and held meetings at Lake Success, Jerusalem, Beirut and Geneva. It drew up eleven general recommendations unanimously agreed to, of which the most important were that the mandate over Palestine should be terminated and independence granted to Palestine at the earliest possible date. In addition, the majority of the Committee⁴ expressed themselves, by recorded vote, in favor of a plan for partition of Palestine into an Arab State and a Jewish State bound together by an economic union, whereas the city of Jerusalem was to be placed under international trusteeship.⁵

The second regular session of the General Assembly which was held in Flushing from 23 September to 29 November 1947 established an Ad Hoc Committee on the Palestine Question. In this Committee the legal aspects

* Acknowledgment is made to Dr. Axel Serup, Mr. Alan Renouf and Mr. F. Blaine Sloan for assistance in the preparation of these notes.

¹ UN Doc. A/286, 3 April 1947.

² Australia, Canada, Czechoslovakia, Guatemala, India, Iran, Netherlands, Peru, Sweden, Uruguay and Yugoslavia.

³ UN Doc. A/309, 23 May 1947.

⁴ Canada, Czechoslovakia, Guatemala, Netherlands, Sweden, Peru and Uruguay.

⁵ UN Doc. A/364, 3 September 1947.

of the whole Palestine problem and the competence of the United Nations to implement proposals for partition were brought up by the representatives of several Arab States who challenged the legality of such proposals and expressed the view that the United Nations lacked the necessary power to decide to partition Palestine.⁶ It was suggested by the Arab States that in case the Committee were to take a different view a request should be made for an advisory opinion of the International Court of Justice "regarding the legal competence of the General Assembly to make any recommendations or to enforce any scheme in Palestine not acceptable to the majority of its population." It was also proposed that a further request be made for an opinion as to the powers which the General Assembly or any other organ of the United Nations can exercise under the Charter with respect to the future government of Palestine.⁷ No action was taken on these proposals.

In spite of the opposition from the representatives of the Arab States the Committee finally adopted a draft resolution embodying a Plan of Partition with Economic Union which in general lines followed the majority proposal of UNSCOP.

At the 128th Plenary Meeting of the General Assembly on 29 November 1947 the Assembly adopted by 33 votes, with 13 against⁸ and 10 abstentions⁹ the report of the Ad Hoc Committee with the resolution on the Future Government of Palestine.¹⁰ After the adoption of the resolution, the representatives of the Arab States announced their continuing opposition to the plan of partition. They stated that their Governments would not consider themselves bound by the resolution which, in their opinion, was contrary to the Charter and totally lacking in legal validity.¹¹

At the same meeting, the General Assembly elected Bolivia, Czechoslovakia, Denmark, Panama and the Philippines as members of the Commission which by the terms of the resolution was entrusted with the implementation of the measures recommended by the General Assembly in the Plan of Partition.

The Palestine Commission was thus primarily established as a subsid-

⁶ For the viewpoint of the Arab States, see in particular the report of Sub-Committee II of the Ad Hoc Committee on Palestine, Chapter 1, entitled "Legal Issues Connected with the Palestine Problem," UN Doc. A/AC.14/32, pp. 5-24, 11 November 1947.

⁷ UN Doc. A/AC.14/32, p. 15, 11 November 1947. For other proposals to request the Court for advisory opinions concerning Palestine questions see UN Docs. A/AC.14/21, 14 October 1947; A/AC.14/24, 16 October 1947; and A/AC.14/25, 16 October 1947.

⁸ Afghanistan, Cuba, Egypt, Greece, India, Iran, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria, Turkey, Yemen.

⁹ Argentina, Chile, China, Colombia, El Salvador, Ethiopia, Honduras, Mexico, United Kingdom, Yugoslavia.

¹⁰ UN Doc. A/364, 3 September 1947.

¹¹ For the full text of these statements, see UN Doc. A/P.V. 128, pp. 91-101, 29 November 1947.

iary body of the General Assembly in accordance with Article 22 of the Charter. But at the same time the resolution of the General Assembly¹² placed the Commission under the guidance of the Security Council insofar as the Commission was to act in conformity with the recommendations of the General Assembly under the guidance of the Security Council and under such instructions as the Council might issue. It was provided¹³ that the Commission, in addition to the final report to the General Assembly and the Security Council, should render periodic monthly progress reports to the Security Council. Finally the resolution of the General Assembly requested the Security Council to assume certain direct responsibilities in case the situation in Palestine during the transitional period should develop into a threat to the peace. The Security Council was expressly requested by the resolution, first, to take the necessary measures as provided in the plan for its implementation; second, to consider whether the situation in Palestine during the transitional period constitutes a threat to the peace; and, third, to determine as a threat to the peace, breach of the peace or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by the resolution.¹⁴

Among the major tasks assigned to the Palestine Commission, the following should be mentioned: (1) arranging for the progressive transfer of administrative authority from the Mandatory Power to the Commission; (2) conducting the consultations and negotiations essential to the selection, establishment and functioning of the proposed Provisional Councils of Government; (3) maintenance of public order in the transitional period following the termination of the mandate (15 May 1948) and prior to the transfer of this responsibility to the Provisional Councils of Government; (4) negotiations with a view to the formation of an armed militia in each of the proposed states; (5) preparatory work in connection with establishment of the Economic Union; (6) preparation of the ground for the application of the Special Regime for the City of Jerusalem.

The Commission held its first meeting at Lake Success on 9 January 1948. Invitations were extended to the Mandatory Power, the Arab Higher Committee and the Jewish Agency for Palestine to designate representatives to be available to the Commission. This invitation was accepted by the Mandatory Power and the Jewish Agency with whom numerous consultations took place. The Arab Higher Committee informed the Commission that it was unable to accept the invitation and that it was determined to persist in rejecting partition and in refusing to recognize

¹² General Assembly Resolution 181 (II), 29 November 1947, Plan of Partition with Economic Union, Part I B 2 and 14.

¹³ Same, Part I B 14.

¹⁴ General Assembly Resolution 181 (II), 29 November 1947, Part A (a), (b), and (c).

the General Assembly's resolution in this respect and anything deriving therefrom.

The Palestine Commission in its First Monthly Report to the Security Council¹⁵ on 29 January 1948 stated that it "was devoting most serious attention to the various aspects of the security problem, with particular reference to the possible need for an international force in the implementation of the recommendations of the General Assembly" and that it would submit to the Security Council a special report on this subject.

In the First Special Report on the Problems of Security which was presented to the Security Council on 16 February,¹⁶ the Commission set forth the view that "the sole motivation of the Commission is to obtain from the Security Council that effective assistance without which, it is convinced, it cannot discharge the great responsibilities entrusted to it by the General Assembly."

When the Security Council on 24 February began the consideration of the General Assembly's resolution together with the First Monthly Report and the Special Report on the Problem of Security in Palestine, Mr. Lisicky, the Chairman of the United Nations Palestine Commission, repeated the statement of the Commission that it would be impossible to discharge its responsibility without effective assistance from the Security Council.¹⁷ This statement was interpreted by the representative of the United States as a conclusion by the Commission that its functions under the General Assembly Resolution could not be fulfilled unless armed forces were provided by the Security Council.¹⁸

Mr. Warren Austin, representative of the United States, stated that, in the opinion of the Government of the United States, the Charter of the United Nations does not empower the Security Council to enforce a political settlement whether pursuant to a recommendation of the General Assembly or of the Security Council itself. However, he expressed no doubt that should the Security Council determine the existence of a threat to the peace in respect to Palestine, it would be authorized to take forceful measures to remove such a threat to international peace. Its finding and subsequent action, he said, might arise either in connection with incursions into Palestine from the outside or from such internal disorder as would itself constitute a threat to international peace.¹⁹ He further stated, "attempts to frustrate the General Assembly's recommendation by the threat or use of force, or by incitement to force, on the part of states or people outside Palestine are contrary to the Charter."²⁰

¹⁵ UN Doc. S/663, 31 January 1948.

¹⁶ UN Doc. S/676, 16 February 1948.

¹⁷ UN Doc. S/P.V. 253, pp. 29-30, 24 February 1948.

¹⁸ Same, at pp. 53-55.

¹⁹ Same, at pp. 47-48.

²⁰ Same, at p. 32.

Mr. Faris el-Khouri, representative of Syria, raised several legal questions. He argued that the General Assembly was not entitled to delegate to a subsidiary organ such functions as the administration of a country, functions which the General Assembly did not itself possess. He further stated that recommendations are not binding on the States to whom they are addressed until these States have adopted the recommendations "through their formal processes," and that no Member State had adopted the recommendation of the General Assembly on the Partition of Palestine with Economic Union. He also contended that the General Assembly was entitled to make no recommendation for enforcement but only for peaceful settlement and that the Security Council had no authority to use force for preserving public order within a country.²¹

Mr. Shertok, representative of the Jewish Agency for Palestine, who had been invited by the Security Council to participate in the discussion, replied that the Security Council was faced with an "attempt to alter by force the settlement decreed by the General Assembly" and stated that the recommendation of the General Assembly was addressed, in the first place, to the mandatory power and "was accepted by the mandatory power as a *decision* of that body."²²

A working paper on the Relations Between the United Nations Commission and the Security Council which was prepared by the Secretariat at the request of the Palestine Commission was communicated to the Security Council by a letter of the Secretary-General dated 5 March 1948.²³ The main points in this memorandum are summarized as follows:

(1) The Security Council may issue any instructions to the Palestine Commission which it considers necessary, provided that such instructions do not alter the plan of partition provided in the General Assembly resolution but only aim at its implementation.

(2) It is within the competence of the Security Council under "Article 24 of the Charter, as interpreted in the case of Trieste" to accept responsibilities assigned to it by the General Assembly. With regard to the administration of the Free Territory of Trieste, the Security Council had accepted certain responsibilities under the Treaty of Peace with Italy. "It is submitted," the memorandum stated, "that if the Security Council deemed that it was within its competence to accept responsibilities for the carrying out of certain provisions of a treaty negotiated and concluded outside of the United Nations, it is still more appropriate that it should accept responsibilities for the implementation of a plan adopted by the General Assembly."²⁴

²¹ UN Doc. S/P.V. 254, pp. 2-45, 24 February 1948.

²² UN Doc. S/P.V. 258, pp. 2-35, 27 February 1948.

²³ UN Doc. A/AC.21/13, 9 February 1948. See S/P.V. 265, 10 March 1948.

²⁴ UN Doc. A/AC.21/13, p. 7, 9 February 1948.

(3) The Security Council may provide an international armed force for Palestine either under Article 42 of the Charter if it should determine the existence in Palestine of a threat to the peace, breach of the peace, or act of aggression, or under the resolution of the General Assembly in conjunction with Article 24 of the Charter. Concerning this second alternative the memorandum concludes: "An international armed force set up on this basis would not be one in the sense of Chapter VII of the Charter. It would have the character of an international police force for the maintenance of law and order in a territory for which the international society is still responsible."²⁵

On 5 March the Council adopted a resolution in which it called on the permanent members to consult and inform the Council regarding the situation with respect to Palestine and "to make recommendations to it regarding the guidance and instructions which the Council might give to the Palestine Commission with a view to implementing the resolution of the General Assembly."²⁶

During the ensuing consultations among the permanent members of the Security Council, the Palestine Commission presented its Second Monthly Progress Report²⁷ to the Security Council on 15 March. In this Report the Commission made known the impossibility of implementing, within the prescribed time limit, the provision of the Plan of the General Assembly concerning the Provisional Councils of Government, and the impossibility of taking preparatory steps for the formation of armed militias. The Commission further pointed out that the policy of the Mandatory Power together with the steady deterioration of conditions in Palestine left little hope for the achievement of continuity in administrative services and for an orderly transfer of authority to the Commission. It was also stated that "unless security is restored in Palestine, implementation of the resolution of the General Assembly will not be possible."

On 19 March the permanent members of the Security Council reported to the Council on the result of their consultations. The same day the representative of the United States declared that the limited responsibilities of the United Nations set forth in the plan of partition were inseparable from the balance of the plan and were dependent upon the adoption and implementation of the entire plan. If therefore it proved impossible to give effect to the resolution, the United Nations on 15 May 1948 would have no administrative or governmental responsibilities for Palestine, unless further action was taken by the General Assembly. As there now seemed to be general agreement that the plan of partition could not be implemented by peaceful means, the United States Government believed

²⁵ Same at 11.

²⁶ UN Doc. S/691, 5 March 1948.

²⁷ UN Doc. S/695, 15 March 1948.

that a temporary trusteeship for Palestine should be established under the Trusteeship Council of the United Nations, that a special session of the General Assembly should be held and that pending the meeting of the special session, the Security Council should instruct the Palestine Commission to suspend its work.²⁸

The thesis of the inseparability of the plan of partition thus developed by the representative of the United States was sharply opposed by the representative of the Jewish Agency for Palestine who in the same meeting declared that the statement of the representative of the United States that the plan proposed by the General Assembly was an integral plan which could not succeed unless each of its parts could be carried out, was incorrect and that such a conception never was part of the plan.²⁹

Mr. Ting-Fu Tsiang, the representative of China, did not refer to the question of the inseparability of the plan of partition but expressed his "profound conviction" that the Security Council should not furnish or authorize the use of force to overcome "the existing vigorous Arab resistance to partition" as stated in the report of the Palestine Commission. "Instead of furnishing such force" he said, "we should, consistent with our primary responsibility for the maintenance of international peace and security, order a truce, both military and political." For these reasons, he supported the general principles of the proposal of the representative of the United States.³⁰

At the meeting of the Security Council on 24 March, the representatives of Canada and France expressed their views on the proposal put forward by the representative of the United States.³¹ The representative of Canada referred to a number of assumptions on which the resolution of the General Assembly had been based and which had not been fulfilled. The United States' proposal for establishment of a temporary trusteeship over Palestine would present certain difficulties but also an opportunity for reaching, in a less unfavorable atmosphere, a settlement within the framework of the United Nations Charter. The delegation of Canada, however, was not yet able to pronounce itself in favor of one course of action rather than another. The representative of France also recognized certain advantages and difficulties which the United States plan would present and suggested that the plan be more precisely formulated and elaborated. Like the representative of Canada, he was not yet able to pronounce himself either for or against the United States proposal.

On 1 April 1948 the United States delegation submitted to the Security Council two resolutions.³² One, calling for a truce in Palestine, was

²⁸ See UN Doc. S/P.V. 271, pp. 11-35, 19 March 1948.

²⁹ Same, at 41.

³⁰ UN Doc. S/P.V. 271, pp. 44-50, 19 March 1948.

³¹ UN Doc. S/P.V. 274, 24 March 1948.

³² UN Doc. S/714, 7 April 1948.

adopted unanimously by the Council. The other, adopted by 9 votes in favor with 2 abstentions (USSR and the Ukrainian SSR), requested the Secretary-General to convoke a Special Session of the General Assembly to consider further the question of the future Government of Palestine. Neither resolution contained any guidance or instruction from the Security Council to the Palestine Commission such as envisaged by the General Assembly resolution.

The Second Special Session of the General Assembly which was convoked by the Secretary-General at the request of the Security Council met from 16 April to 14 May 1948. The issues were thoroughly reconsidered by the First Committee,³³ but the Assembly was unable to reach agreement concerning the future Government of Palestine. A proposal by the United States and France for a temporary administration for the City of Jerusalem under Chapter XII of the United Nations Charter failed to receive the two-thirds majority necessary for its acceptance. The Special Session at its final meeting adopted a resolution providing for the appointment of a United Nations Mediator in Palestine and affirmed its support of the efforts of the Security Council to secure a truce in Palestine. Finally, the General Assembly, while expressing its full appreciation for the work performed by the Palestine Commission, relieved it from the exercise of further responsibility under the resolution of 29 November 1947.³⁴

RELATIONS BETWEEN THE INTERNATIONAL COURT OF JUSTICE AND THE INTERNATIONAL TRADE ORGANIZATION

The Final Act of the United Nations Conference on Trade and Employment¹ which was signed at Havana on 24 March 1948 by the representatives of fifty-three governments and which has annexed to it the Charter for the International Trade Organization contains the following resolution:

"The United Nations Conference on Trade and Employment

"Having considered the relation of the International Trade Organization and the International Court of Justice; and

"Having provided in Chapter VIII of the Charter procedures for review by the International Court of legal questions arising out of decisions and recommendations of the Organization,

"Resolves that the Interim Commission of the International Trade Organization, through such means as may be appropriate, shall consult with appropriate officials of the International Court or with the Court itself, and after such consultation report to the first regular session

³³ See Report of First Committee to the General Assembly, UN Doc. A/522, 14 May 1948.

³⁴ UN Doc. A/544. See A/P.V. 135, 14 May 1948. At this writing it is too late to include a discussion of the legal problems arising in the Security Council subsequent to the closure of the Special Session of the General Assembly on 14 May 1948.

¹ UN Doc. E/CONF.2/78.

of the Conference of the International Trade Organization upon the questions of:

- (a) whether such procedures need to be changed to ensure that decisions of the Court on matters referred to it by the Organization should, with respect to the Organization, have the nature of a judgment; and
- (b) whether an amendment should be presented to the Conference pursuant to and in accordance with the provisions of the annex to Article 100 of the Charter."

This resolution represents the culmination of a clash between two conflicting schools of thought regarding the procedures for the settlement of disputes arising from the Charter for an International Trade Organization, a clash which became evident at the First Session of the Preparatory Committee for the Havana Conference and continued throughout the preparatory stages into the Conference itself.² From the resolution quoted it will be seen that it is not yet settled.³

The issue which gave rise to this clash is whether or not the International Trade Organization should be "the master of its own house," that is, whether or not the Organization should be the sole authority which is empowered, either within its own framework or by reference, with its consent, to other sources, to settle disputes, both of a legal character and otherwise, arising between members of the Organization out of the Charter of the Organization. The Suggested Charter for an International Trade Organization which was prepared by the Government of the United States⁴ and adopted by the First Session of the Preparatory Committee as a basis of discussion for its work answered this proposition in the affirmative subject to the qualification that a limited type of disputes involving the interpretation of certain parts of the charter might, after being reviewed by the organs of the Organization, be referred by a party to the dispute to the International Court of Justice without the consent of the Organization. Legal questions of any other type could be referred to the International Court only with the consent of the Organization.⁵ Disputes involving questions not of a legal nature, according to the Suggested Charter, should be within the exclusive domain of the Organization and a procedure was prescribed for their settlement by the two principal organs—the Conference and the Executive Board.⁶

² The Economic and Social Council of the United Nations set up a Preparatory Committee of eighteen members to prepare an agenda for the Conference. The Preparatory Committee held its first session at London in October and November 1946 and its second session at Geneva from April to September 1947.

³ Annex N to the Charter provides a simplified voting procedure for the adoption of amendments to the Charter arising out of the resolution.

⁴ The Suggested Charter is contained in UN Doc. E/PC/T/33, the Report of the First Session of the Preparatory Committee, pp. 52–57.

⁵ Article 76.

⁶ Article 30.

At the First Session of the Preparatory Committee, however, the governments of Belgium, France and the Netherlands espoused the opposite side of the question. These governments argued that any member exposed to serious injury by reason of decisions of the Organization should be entitled to appeal to an independent tribunal free from political bias. They therefore proposed that appeal should ultimately be allowed to the International Court of Justice against any decision of the Organization in a dispute detrimental to the interests of a member. These governments further suggested that the Preparatory Committee should recommend to the United Nations "the setting up within the International Court of Justice of an Economic Chamber to hear and determine disputes arising out of the application of the Charter of the International Trade Organization."⁷

These proposals, being presented at a late stage of the First Session of the Preparatory Committee, were not given full consideration and the Draft Charter produced at that session contains substantially the same provisions as the Suggested Charter on the subject of the settlement of disputes. At the Second Session of the Preparatory Committee one of the proponents of the proposition that the Organization should be "the master of its own house," namely, the Government of the United Kingdom, presented a proposal designed to tighten the control upon reference of legal questions to the International Court of Justice by proposing that all such references should require the consent of at least one-third of the members of the Organization.⁸ The governments of Belgium, France and the Netherlands countered by re-introducing their proposals presented at the First Session.

A thorough debate upon the whole subject then ensued. The governments supporting the principle of the Suggested Charter as transposed into the draft prepared at London, notably the United States, the United Kingdom, Canada and Australia, contended that the authority of the Organization demanded that it control absolutely the course of matters arising within its jurisdiction, a task for which it was most competently equipped. The opposing governments replied that ordinary principles of justice called for the provision of some appellate authority which in this case obviously should be the International Court of Justice. To this argument it was retorted that the International Court was not competent to decide most of the disputes which would arise and which would require findings on matters of economic fact and theory.⁹

⁷ UN Doc. E/PC/T/W.233.

⁸ P. 26 of UN Doc. E/PC/T/W.210/Rev.1.

⁹ In this connection a proposal was advanced to establish as one of the organs of the Organization a Claims Board composed of one-half legal and one-half economic experts (UN Doc. E/PC/T/W.248). This proposal was opposed by most governments principally on the grounds that it would complicate the workings of the various organs

The deadlock which ensued was only resolved by a compromise solution of doubtful clarity. A new chapter of the Draft Charter was created by combining and expanding the Articles of the draft produced at the First Session. Paragraph 2 of Article 91 of the new draft contained the compromise solution and provided that any decision of the Conference in a dispute should "be subject to review by the International Court of Justice through the means of a request by the Organization for an advisory opinion pursuant to the Statute of the International Court."¹⁰ A further provision of the new chapter, namely, the first half of paragraph 3 of Article 92, read: "The Members undertake that they will not have recourse to any procedure other than the procedures envisaged in this Charter for complaints and the settlement of difficulties arising out of its operation."¹¹

The compromise solution is said to be of doubtful clarity because whereas it commenced with the phrase "*any* resolution of the Conference," this phrase was restricted by the procedure laid down, namely, the advisory opinion procedure, which is limited by Article 96 of the Charter of the United Nations to legal questions arising within the scope of the activities of the Organization concerned. This lack of clarity gave rise to confusion on the part of some of the governments represented at the Havana Conference which interpreted Article 91 of the Draft Charter as meaning that resort could be had to the International Court from any decision of the Conference of the Organization arising out of a dispute. Inevitably in these circumstances the whole question was re-opened for the second time at Havana. It was proposed by the opponents of Article 91, notably Colombia, France and Poland, that that article should be amended so as to enable any interested member to refer any decision of the Conference upon a dispute to the International Court, the grounds of reference being confined to "legal considerations regarding competence, action *ultra vires* or the interpretation of the Charter."¹² This proposal was supplemented by a draft resolution addressed to the International Court asking whether an amendment should not be made to its Statute so as to permit inter-governmental organizations to appear before it as litigants.¹³

These new proposals gained some measure of support but when a state of deadlock seemed inevitable they were in greater part withdrawn. A compromise was found in the adoption of the resolution quoted at the commencement of this Article, the substance of paragraph 2 of Article 91 in the Draft Charter being carried over into paragraph 2 of Article 96 of the

of the Organization and that the system from which it was derived, namely that of administrative tribunals within states, operated within the framework of well-established and administered legal codes, which were non-existent in the international sphere.

¹⁰ P. 53 of the Report of the Second Session of the Preparatory Committee—UN Doc. E/PC/T/186.

¹¹ Same, p. 54.

¹² Doc. UN E/CONF.2/C.6/W.73.

¹³ Same.

Charter in its final form. The first half of paragraph 3 of Article 92 in the Draft Charter to which attention was drawn above became paragraph 1 of Article 92 of the Charter in its final form.

This paragraph gave rise to an interesting discussion at Havana. The government of Mexico questioned whether the obligations contained in the first half of paragraph 3 of Article 92 of the Draft Charter would not conflict with the obligations of a government which had unconditionally accepted the compulsory jurisdiction of the International Court. To meet this point the text was amended to read:

"The Members undertake that they will not have recourse, *in relation to other Members and to the Organization*, to any procedure other than the procedures envisaged in this Charter for complaints and the settlement of differences arising out of its operation."

Some doubt was expressed whether the insertion of these words fully met the objection raised.¹⁴

The language of the resolution adopted at Havana is such that the first stage of the consultations to be undertaken between the International Court and the Commission will probably be the interpretation of the operative part of the resolution. The two paragraphs of the operative part are, it would appear, separate and unconnected. It seems also that the intention of the first paragraph is to have the International Court express its opinion on the question whether or not the Organization should be able to appear before the Court as a litigant. If the answer is in the affirmative, an amendment to the Statute of the Court would be required. The second paragraph would seem to be aimed at a general review of all the provisions of the Chapter dealing with the settlement of disputes so that the Court may indicate whether in its opinion they are satisfactory or not.

¹⁴ It has been argued that there is no difficulty in the case of a dispute between two members of the Organization which have accepted the compulsory jurisdiction of the Court subject to the reservation that they might in future agree to resort to other procedures in certain types of cases. Several states have done so. But in the case of two members both of which have accepted the compulsory jurisdiction unconditionally, an obligation under the Statute of the Court would, in view of Article 103 of the Charter of the United Nations, prevail over an obligation under the Charter of the International Trade Organization. Also in the case of a dispute arising under that Charter between a member of that organization which has accepted the compulsory jurisdiction unconditionally and a non-member which has accepted such jurisdiction, the member presumably could not refuse to appear before the Court.

On the other hand, it has been contended with considerable force that the acceptance of compulsory jurisdiction of the Court by two states, even though it is unconditional, is in fact only a declaration of readiness by each state to go to the Court, if the other state summons it. There is no obligation under the Optional Clause of the Court Statute imposed on the two states to take all their disputes to the Court. All that the unconditional acceptance of the Court's jurisdiction means is that a state cannot refuse to be defendant, though it can refuse to be plaintiff.

It is to be noted, finally, that the scope of the amendments to the Charter which may be recommended by the Interim Commission for the International Trade Organization as a result of its consultations with the International Court are restricted by Annex N of the Charter which provides *inter alia* that any such amendment shall not provide "for review by the Court of any economic or financial fact as established by or through the Organization." This limitation appears to ensure that the victory won by the advocates of the theory that the Organization should be "the master of its own house" over the past eighteen months will be preserved.

COMPETENCE OF THE ECONOMIC AND SOCIAL COUNCIL IN THE
CONSIDERATION OF DISPUTES

During its Sixth Session, the Economic and Social Council placed on its agenda, at the request of Yugoslavia, the item, "Damage Caused to the Federal People's Republic of Yugoslavia by the withholding of its Gold Reserves by the United States of America."¹ The Council was thus presented with a problem concerning its competence in the consideration of disputes between Member States. Legal questions of considerable significance were involved, due to the potential influence that a decision in this case might exercise on the future competence of the Council in a wide range of subjects.

Following the request for the inclusion of the item on the provisional agenda, the Yugoslav delegation submitted a statement on which was based its request to the Council for a recommendation that the United States cease causing damage to Yugoslavia by the further retention of its monetary reserves. In this statement it was set forth that prior to the German invasion of Yugoslavia, the National Bank of Yugoslavia transferred the major part of its monetary reserves to the United States and entrusted them to the Federal Reserve Bank in New York. During World War II the Government of the United States froze these assets together with the assets of other countries who were under, or threatened with, enemy occupation in order to prevent the assets from coming into the hands of Germany or of quisling governments. Negotiations for the return of the reserves were carried on from May to November 1947, but the United States took the position that the reserves would be withheld pending settlement of outstanding claims between the two countries.² The Yugoslav statement maintained that by withholding its reserves the United States Government ignored the original character of the deposit, violated the Bretton Woods Agreement, and committed a discrimination to the detriment of Yugoslavia. Damages were alleged to result through (1) the increase in

¹ Item 31 of Provisional Agenda, UN Doc. E/607, 12 January 1948.

² Claims of the United States included claims for compensation for property of American citizens taken by nationalization decrees, lend lease accounts, and claims involving United States airplanes shot down over Yugoslavia.

prices throughout the world, (2) the retardation of economic reconstruction and production, and (3) the resultant lack of export as a source for new foreign currency. An economic problem involving the reconstruction of war devastated areas and affecting the European and world economy as a whole, it was alleged, was thus created.³

The question was included as item 8 of the agenda adopted by the Council at its 123rd plenary meeting on 4 February 1948.⁴ Mr. Thorp, representative of the United States, questioned the propriety of considering the question since it was not, he argued, the function of the Economic and Social Council to act in arbitration of disputes. However, he did not ask for the deletion of the item from the agenda as the United States, he said, had no objection to the public discussion of its actions.⁵

The subject was first discussed by the Economic and Social Council on 16 February 1948. The representative of Yugoslavia, Mr. Vilfan, was invited, in accordance with Article 69 of the Charter, to participate, without vote, in the deliberations. In stating the Yugoslav case, Mr. Vilfan said that his Government was applying to the Economic and Social Council because one of the principal tasks of that organ was to promote, in the words of the Charter, "higher standards of living, full employment and conditions of economic and social progress and development." The refusal of the United States to restore the gold reserves, he argued, was not only prejudicial to economic and social progress in Yugoslavia but affected the European economy as a whole. He also suggested that the controversy between the United States and Yugoslavia concerned two distinct questions and that the question of claims and counter-claims was absolutely independent of the question of the restitution of the gold reserves.⁶

Mr. Thorp, in replying on behalf of the United States Government, argued that the Council was without authority under the Charter of the United Nations to consider the questions raised by the representative of Yugoslavia. It was the function of the Economic and Social Council, he stated, to study the broad aspect of social and economic problems confronting the world; it was in no way its function to deal with disputes which might arise between nations. He drew the attention of the Council to the complex nature of the economic controversy, and argued that, under the doctrine of set-off, there was a definite relationship between the question of the gold reserves and the settlement of other claims. He suggested that the Economic and Social Council refrain from taking any decision, and leave the two countries directly concerned to settle the matter between them.⁷

³ UN Doc. E/624, 27 January 1948.

⁴ UN Docs. E/631, 31 January 1948; E/SR.123, p. 9, 4 February 1948.

⁵ UN Doc. E/SR.123, p. 6, 4 February 1948. See Department of State Bulletin, Vol. 18, pp. 209-210, 15 February 1948.

⁶ UN Doc. E/SR.142, pp. 2-5 and 7, 16 February 1948.

⁷ Same, at 5-7.

The competence of the Council to deal with disputes was immediately questioned by several representatives.⁸ Mr. Makin, representative of Australia, stated that "the Council must use its power to make recommendations with respect to international economic matters, in the light of the fact that the Charter recommends negotiation and arbitration as methods of settling disputes and also provides an International Court of Justice." Whether a dispute should come before the Council, he stated, depends on the nature of the question at issue.⁹

Arguments supporting the competence of the Council were advanced by other representatives. Mr. Arutjunian, representative of the Soviet Union, stated that the present case involved a general question of economic cooperation between all countries similar to the Danubian ships case considered by the Council. The Soviet Union representative therefore proposed that the question be referred to committee for a thorough examination.¹⁰

Reference to a committee was opposed by representatives of the United States, Australia, Turkey, Canada and Venezuela who thought that the Council should determine its own competence immediately.¹¹ However, a draft resolution, requesting the Economic Committee to examine the question whether the Council was competent to deal with a matter of this kind and to submit a reasoned report serviceable for future similar cases, was adopted by a vote of 9 to 7 with 2 abstentions.¹²

The matter of competence was taken up by the Economic Committee at its 16th, 17th and 18th meetings from 2 to 4 March 1948. Mr. Vilfan, representing Yugoslavia, presented arguments in favor of the competence of the Council based on Articles 55, 56, 60, and 62, paragraph 1, of the Charter. He stated that Yugoslavia was only asking the Council to recommend that the United States restore the gold reserves, and that this was an economic recommendation.¹³

The United States representative, Mr. Stinebower, in reply, entered into an historical review of Article 62, paragraph 1 of the United Nations Charter under which the Council is given authority to make recommendations to Member Governments on economic subjects. He cited the records of the San Francisco Conference which, he argued, indicated that the Economic and Social Council could only make recommendations to the United Nations Members collectively and not to individual Members.¹⁴ It

⁸ Same, at 7-9.

⁹ UN Doc. E/AC.6/18, 19 February 1948. See E/AC.6/23, 1 March 1948.

¹⁰ UN Doc. E/SR.142, pp. 8-10, 16 February 1948; E/SR.143, pp. 2-4, 18 February 1948.

¹¹ UN Doc. E/SR.143, pp. 4, 5, 7, 18 February 1948.

¹² Same, at 8.

¹³ UN Doc. E/AC.6/SR.16, pp. 2-4, 8 March 1948.

¹⁴ United States Mission to the United Nations, Press Release No. 396, 2 March 1948. See UN Doc. E/AC.6/SR.16, pp. 4-6, 8 March 1948. To support this inference, Mr. Stinebower cited the records of the sub-committee kept by the United States delegation at San Francisco, stating that the action rejecting an Australian proposal for a pro-

was also argued that the matter did not come within the competence of the Council because of legal questions involved,¹⁵ and because it was a bilateral dispute, not an international economic problem.¹⁶ Mr. Patijn, representative of the Netherlands, stated that if the Council should be deemed competent to deal with disputes of this nature then difficulties resulting from trade agreements and similar economic disputes might be brought before the Council.¹⁷

On the other hand, it was argued that the matter was an essentially economic question within the competence of the Council; that it did not present legal questions; and that the Council could make recommendations to individual Members.¹⁸ It was further stated by the representative of the Soviet Union that the Yugoslav gold reserves case was only one illustration of the external policy of the United States, whose Government was resorting to methods incompatible with international economic coöperation and contrary to the terms of the Charter.¹⁹

At the request of the Economic Committee,²⁰ Dr. Kerno, Assistant Secretary-General in charge of the Legal Department, presented an opinion on the legal and constitutional issues involved in the question of competence. The salient points in this opinion were as follows:

- (1) The Council has the right to interpret the scope of its own functions and powers, subject to this right being questioned where a conflict exists;
- (2) The Council has jurisdiction to deal with the item in question and any other international economic matter from the economic aspect;
- (3) The Council has also jurisdiction to deal with the item in question and any other international economic matter from the dispute aspect, provided it considers such dispute to be related to an international economic problem and to be of a nature such as would primarily be the concern of the Council;
- (4) The Council would never have jurisdiction to deal with a dispute as such, but only with a dispute of an economic character of the kind outlined in this memorandum.²¹

vision to authorize the Economic and Social Council to make recommendations to a single Member eliminated "the possibility of recommendations to individual Members." Dr. Kerno, Assistant Secretary-General in charge of the Legal Department, stated that grammatical and logical interpretations of texts should be the primary bases for legal conclusions and that historical interpretation, although important, was only an auxiliary method applied to cases in which texts were not sufficiently clear. UN Docs. E/AC.6/SR.16, p. 6, 8 March 1948; E/AC.6/SR.18, p. 12, 6 March 1948.

¹⁵ UN Docs. E/AC.6/SR.16, p. 8, 8 March 1948; E/AC.6/SR.17, p. 5, 5 March 1948.

¹⁶ UN Docs. E/AC.6/SR.16, p. 9, 8 March 1948; E/AC.6/SR.17, pp. 7, 10, 5 March 1948.

¹⁷ UN Doc. E/AC.6/SR.17, p. 7, 5 March 1948.

¹⁸ UN Doc. E/AC.6/SR.17, pp. 5, 6, 14, 5 March 1948.

¹⁹ Same, at 6.

²⁰ See UN Doc. E/AC.6/21, 25 February 1948.

²¹ UN Doc. E/AC.6/25, 1 March 1948.

Following discussion by the Economic Committee, the question of competence was put to a vote at the 18th meeting. A Yugoslav draft resolution proposing to declare that the Council had competence was rejected by twelve votes to three, with two abstentions. A United States draft resolution, together with a French amendment, was then examined. By a vote of eleven to three, with three abstentions, the Committee considered that the Economic and Social Council was not competent to deal with particular disputes, and by a close vote of five to four, with eight abstentions, the Committee also considered that Article 62 of the Charter did not empower the Council to make recommendations to individual Members of the United Nations. The complete draft resolution to the effect that the Council was without jurisdiction was adopted by the Committee by eleven votes to three, with three abstentions.²²

The Report of the Economic Committee²³ was discussed at the 167th to 170th plenary meetings of the Economic and Social Council on 8 and 9 March 1948. While the majority appeared willing to accept the conclusion of the Economic Committee that the Council had no competence in the specific question before it, there was reluctance on the part of many representatives to take any action which might be interpreted as establishing a principle for future application. Particular hesitance was expressed concerning the statement in the draft resolution presented by the Economic Committee that the Council could not make a recommendation to an individual Member. Mr. Borberg, the representative from Denmark, feared that by giving too narrow an interpretation to Article 62, a dangerous precedent might be established. This interpretation might prevent the Council from making recommendations to a Member State in the future on such matters as the traffic in narcotic drugs or the crime of genocide.²⁴ Representatives of Canada, Australia, United Kingdom, Peru and Venezuela indicated their agreement that the Council should retain freedom of decision in each case and not prejudice its position for the future.²⁵ Mr. Ordonneau, the representative of France, on the other hand, argued strongly that it was essential for the Council to give the reason for its decision.²⁶

The Council, by a vote of fourteen to three with one abstention, accepted the conclusion of the Economic Committee that "this case does not fall within the competence of the Council";²⁷ but rejected the statement of the reasons which had been suggested to support this decision.²⁸

²² UN Doc. E/AC.6/SR.18, p. 15, 6 March 1948.

²³ UN Doc. E/743, 4 March 1948.

²⁴ UN Doc. E/SR.167, p. 10, 19 March 1948.

²⁵ UN Docs. E/SR.167, p. 13, 19 March 1948; E/SR.169, pp. 5, 9-10, 24 March 1948.

²⁶ UN Doc. E/SR.169, p. 4, 24 March 1948.

²⁷ UN Doc. E/SR.169, p. 15, 24 March 1948.

²⁸ In addition to the draft resolution contained in the Report of the Economic Committee, the Council had before it draft resolutions submitted by Venezuela (UN Doc.

1. The first suggested reason that the Council was not competent to deal with particular disputes was rejected by ten votes to seven with one abstention.
2. The second suggested reason that Article 62 of the Charter does not empower it to make recommendations to individual Members was rejected by the decisive vote of fifteen to two, with one abstention.
3. A third suggested reason that the matter is not an international economic matter in the sense of Article 62 of the Charter was rejected by seven votes to six with five abstentions.²⁹

The Council then adopted a suggested reason proposed jointly by the representatives of Chile, France, the United Kingdom and Venezuela to the effect that the Council "could not examine the substance of this matter without thus being led to the consideration of the different aspects of the particular dispute existing between the United States of America and the Federal Peoples' Republic of Yugoslavia," and that the Council "has not competence to take cognizance of such aspects because of the juridical issues involved."³⁰ The Council also expressed the hope that the two countries would settle their dispute as soon as possible.³¹

A perusal of the discussions and an analysis of the voting demonstrate that while many representatives on the Economic and Social Council were of the opinion that the Council was not competent to consider the question referred to it by Yugoslavia, they were extremely reluctant to adopt any general rule or principle which would tie the hands of the Council in the future. The rejection of the several reasons advanced by different representatives, it was pointed out, did not necessarily indicate that these reasons were considered invalid by those voting against them.³²

The Council did decide, by the resolution as finally adopted, that it was without competence to consider the dispute between Yugoslavia and the United States because of the juridical issues involved. It seems that the representatives prefer that the development of principles governing the competence of the Economic and Social Council should be by accumulative jurisprudence based on specific cases, and not by the adoption of broad generalizations specifically designed for future guidance.

E/759, 9 March 1948) and Denmark (UN Doc. E/760, 9 March 1948), and a joint amendment to the Venezuelan draft resolution submitted by the representatives of Chile, France, the United Kingdom, and Venezuela (UN Doc. E/763, 9 March 1948).

²⁹ UN Doc. E/SR.170, pp. 5, 7, 25 March 1948.

³⁰ The first paragraph was adopted by a vote of 12 to 6, and the second by a vote of 11 to 5 with 2 abstentions. UN Doc. E/SR.170, p. 7, 25 March 1948.

³¹ The complete resolution was approved by 13 votes to 3, with 2 abstentions. UN Doc. E/SR.170, p. 9, 25 March 1948. For text see UN Doc. E/764. The claims and counterclaims of the two countries were settled by formal agreement signed by the Secretary of State for the United States and the Deputy Minister of Finance for Yugoslavia on 19 July 1948.

³² See statements of the representatives of Canada and the Netherlands. UN Docs. E/SR.167, p. 15, 19 March 1948; E/SR.170, p. 9, 25 March 1948.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD FEBRUARY 1-APRIL 30, 1948

(Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: *A. E. C. O. R.*, U. N. Atomic Energy Commission Official Records; *C. I. E. D.*, Chronology of International Events and Documents, Royal Institute of International Affairs; *C. S. Monitor*, Christian Science Monitor; *Cmd.*, Great Britain Parliamentary Papers by Command; *Cong. Rec.*, Congressional Record; *D. & S. P.*, Department of State Documents & State Papers; *D. S. B.*, Department of State Bulletin; *E. S. C. O. R.*, United Nations Economic and Social Council Official Records; *F. A. O.*, Food & Agriculture Organization; *G. B. M. S.*, Great Britain Miscellaneous Series; *G. B. T. S.*, Great Britain Treaty Series; *I. B. R. D.*, International Bank for Reconstruction and Development; *I. C. E. F.*, International Children's Emergency Fund; *I. C. J.*, International Court of Justice; *I. M. F.*, International Monetary Fund; *I. T. U.*, International Telecommunications Union; *N. Y. T.*, New York Times; *P. A. U.*, Pan American Union; *S. C. O. R.*, United Nations Security Council Official Records; *T. I. A. S.*, U. S. Treaties and other International Acts Series; *U. N. B.*, United Nations Bulletin; *U. P. U.*, Universal Postal Union.

GENERAL*

October, 1941

1-June 30, 1945 WORLD WAR. U. S. Department of State released Apr. 8, 1948, the texts of 4 Soviet Supply Protocols (operating agreements) as follows: Moscow Protocol for the period Oct. 1, 1941-June 30, 1942; Washington Protocol, July 1, 1942-June 30, 1943; London Protocol, July 1, 1943-June 30, 1944; Ottawa Protocol, July 1, 1944-June 30, 1945. Texts: Dept. of State *European Series*, No. 22.

May, 1945

7/15 CANADA-UNITED STATES. Exchanged notes at Ottawa providing for continuation of the principles of the Hyde Park Declaration (April 20, 1941) into the postwar transitional period with special reference to the problem of re-conversion of industry. Texts with text of Hyde Park Declaration: Canada *Treaty Series*, 1948, No. 1.

May, 1947

15/Sept. 8 CANADA-FRANCE. Effected agreement by exchange of notes at Paris concerning application of the French national solidarity tax to Canadian nationals and corporations. Text, with annex: Canada *Treaty Series*, 1947, No. 28.

19/July 14 CANADA-LIECHTENSTEIN-SWITZERLAND. Canada and Switzerland exchanged notes at Ottawa extending to the Principality of Liechtenstein, as of July 14, 1947, the treaty of friendship of Sept. 6, 1855 and the additional convention of March 30, 1914. Texts: Canada *Treaty Series*, 1947, No. 28.

* See p. 680, below, for United Nations and Specialized Agencies; also p. 688 and following for United Nations agreements.

August, 1947

- 20 CANADA—FRANCE. Signed financial agreement at Ottawa, supplementary to that of Apr. 9, 1946. Text with exchange of notes: *Canada Treaty Series*, 1947, No. 23.

October, 1947

- 30 CANADA—UNITED STATES. Signed agreement and exchanged notes at Geneva rendering inoperative the agreement of Nov. 17, 1938, upon the coming into force of the General Agreement on Tariffs and Trade of Oct. 30, 1947 [which became effective Jan. 1, 1948]. Texts: *T. I. A. S.* 1702.
- 30 GREAT BRITAIN—UNITED STATES. Signed agreement at Geneva rendering inoperative the Agreement of Nov. 17, 1938, upon the coming into force of the General Agreement on Tariffs and Trade of Oct. 30, 1947 [which became effective Jan. 1, 1948]. Text and accompanying letters: *T. I. A. S.* 1706.
- 30 NETHERLANDS—UNITED STATES. Signed agreement at Geneva rendering inoperative the agreement of Dec. 30, 1945 upon the coming into force of the General Agreement on Tariffs and Trade of Oct. 30, 1947 [which became effective Jan. 1, 1948]. Text, with accompanying letters: *T. I. A. S.* 1705.

November, 1947

- 10 CHINA—UNITED STATES. Signed agreement at Nanking regarding establishment in China of the United States Educational Foundation [for carrying out provisions of the Fulbright Act]. Text: *T. I. A. S.* 1687; U. S. 80th Cong., 2d Sess. *H. Doc.* 562, pp. 5-9.

December, 1947

- 22 BURMA—UNITED STATES. Signed agreement at Rangoon regarding establishment in Burma of the United States Educational Foundation [for carrying out provisions of the Fulbright Act]. Text: *T. I. A. S.* 1685.
- 27/Jan. 1, 1948 ITALY. New constitution adopted Dec. 27, 1947 came into force Jan. 1, 1948. Text: *D. & S. P.*, April, 1948, pp. 46-63.

January, 1948

- 1-March 31 TRIESTE. Report of the Administration of the British-U. S. zone of the Free Territory for the period was forwarded May 24, 1948 to the President of the Security Council. Text: U. N. *Doc.* S/781.
- 12 INTERNATIONAL JOINT COMMISSION (U. S. and Canada). Secretary of State Marshall sent notes to the Commission announcing new terms of reference. Texts: *D. S. B.*, Feb. 1, 1948, pp. 150-151. Members of the Engineering Boards: *D. S. B.*, Apr. 18, 1948, p. 522.
- 19/Feb. 7 SOVIET RUSSIA—UNITED STATES. U. S. notes protested the recent arrest in Hungary of two American officers by Soviet troops. Texts: *D. S. B.*, Feb. 22, 1948, pp. 244-248.
- 24/Feb. 5 CHINA—GREAT BRITAIN. British note of Jan. 24 defended recent eviction of squatters from Hong Kong area. Chinese reply of Feb. 5 re-asserted China's claim to Kowloon. *N. Y. T.*, Feb. 7, 1948, p. 5; *London Times*, Feb. 7, 1948, p. 4. Text of Chinese note: *China Magazine* (N. Y.) Mar. 1948, pp. 62-64.
- 28-March 6 WHEAT. International Wheat Council held special session in Washington. *D. S. B.*, Mar. 28, 1948, p. 396. Signed Mar. 6 a 5-year agreement. Summary: pp. 395-401. Text: *Cong. Rec.* (daily) Apr. 30, 1948, pp. 5205-5210; *G. B. M. S.*, No. 8 (1948), *Cmd.* 7382; *D. & S. P.*, May, 1948, pp. 102-111.

- 30 ARGENTINA—FRANCE. Signed aviation agreement at Paris. Text, with annex: *Revue Française de Droit Aérien*, Jan./Mar. 1948, pp. 65-74.
- 30/Feb. 11 GREAT BRITAIN—SWITZERLAND. Signed agreement stabilizing sterling balance and reviving tourism. *N. Y. T.*, Feb. 3, 1948, p. 9; *London Times*, Feb. 3, 1948, p. 4. It was approved Feb. 11 by the Swiss Federal Council. *N. Y. T.*, Feb. 12, 1948, p. 12.

February, 1948

- 1 MALAYA. New constitution was formally inaugurated at Kuala Lumpur, and Sir Edward Gent, hitherto Governor of the Malayan Union, was sworn in as first High Commissioner of the new Federation of Malaya. *London Times*, Feb. 2, 1948, p. 4.
- 2 ITALY—UNITED STATES. Signed at Rome a 10-yr. treaty of friendship, commerce and navigation. *N. Y. T.*, Feb. 3, 1948, pp. 1, 5; *London Times*, Feb. 3, 1948, p. 3; *D. S. B.*, Feb. 15, 1948, p. 219. Summary: *D. S. B.*, Apr. 25, 1948, pp. 550-551.
- 3 RUMANIA—UNITED STATES. U. S. note was delivered charging complete suppression of political freedom, contrary to the Rumanian peace treaty. *N. Y. T.*, Feb. 5, 1948, pp. 1, 8. Text: p. 8; *D. S. B.*, Feb. 15, 1948, pp. 216-218. Great Britain sent similar note. *London Times*, Feb. 5, 1948, p. 4.
- 2-6 CUSTOMS UNION. Study group, representative of 14 European countries and observers from British dominions, Switzerland and Sweden, met at Brussels. It was decided to open a permanent office in Brussels and to develop a common form of tariff nomenclature. *N. Y. T.*, Feb. 7, 1948, p. 4; *London Times*, Feb. 7, 1948, p. 4.
- 2/7 PORTUGAL—UNITED STATES. Effected agreement by exchange of notes in Lisbon on the continuation for a limited period of time of the facilities for transit of American military aircraft through Lages Airfield in the Azores. Text of notes: *D. S. B.*, Mar. 14, 1948, pp. 358-360.
- 2-April 3 ITALIAN COLONIES. Deputies of the Council of Foreign Ministers decided to ask its commission of investigation, now in Africa, to consider whether a small port (Bender Ziada) should be given back to British Somaliland. It was ceded to Italy in 1907. The committee decided to ask Italy to present a statement before Feb. 18. *London Times*, Feb. 3, 1948, p. 3. Deputies met in London Feb. 10 to discuss the order in which they would hear views of other governments. *C. I. E. D.*, Feb. 7/20, 1948, p. 110. The Soviet Government in a note handed the 16th to the Italian Ambassador in Moscow confirmed previously expressed view of May, 1946, that all former colonies should be placed under Italian trusteeship "for a reasonable, fixed term." *London Times*, Feb. 17, 1948, p. 3. Italian memorandum of Mar. 10 to the Council of Foreign Ministers asked that the United Nations entrust Italy with task of preparing Libya to become fully independent. *C. I. E. D.*, Mar. 5/18, 1948, p. 180. Announcement was made Mar. 17 that Tripolitanian Arabs had decided to reject any form of trusteeship. *N. Y. T.*, Mar. 18, 1948, p. 10. Polish note to the Italian Government approved the view that the colonies be placed under Italian trusteeship with the ultimate expectation of independence. *London Times*, Mar. 27, 1948, p. 3. Emperor Haile Selassie stated Apr. 3 he would combat any plan to return Eritrea and Somaliland to Italy. *N. Y. T.*, Apr. 4, 1948, p. 18.

- 4 REPARATIONS (German). In a letter to Senator Vandenberg Secretary of State Marshall stated that it would be unwise to halt dismantling of German industrial plants for shipment to former allies. *N. Y. T.*, Feb. 9, 1948, pp. 1, 4. Text: p. 4. Text of letter and of State Department's memorandum: *D. S. B.*, Feb. 22, 1948, pp. 238-244.
- 4 RUMANIA—SOVIET RUSSIA. Signed a 20-yr. treaty of friendship and mutual assistance. Main provisions: *London Times*, Feb. 6, 1948, p. 4.
- 4/10 CEYLON. Became a self-governing Dominion with the putting into force of the Independence Bill. *London Times*, Feb. 4, 1948, p. 5. The Duke of Gloucester inaugurated the first Dominion Parliament on the 10th. *N. Y. T.*, Feb. 11, 1948, p. 21; *London Times*, Feb. 11, 1948, p. 4.
- 4-April 1 IRAN—SOVIET RUSSIA. Iranian note denied that U. S. advisory officers were in positions of command or had been given any right to interfere in matters concerning the army rank and file, or that the United States had received any position of monopoly through its officials in Iran. *London Times*, Feb. 5, 1948, p. 4; Feb. 6, p. 4. Soviet note of Mar. 24, accused Iranian Government of lying. *N. Y. T.*, Mar. 29, 1948, p. 8. Iranian note again defended policy of having U. S. advisers. *N. Y. T.*, Mar. 30, 1948, p. 12. This note was delivered Apr. 1. Summary: *N. Y. T.*, Apr. 2, 1948, p. 8. Soviet summary of relations, Jan.-Apr. 1948: *Moscow News*, Apr. 6, 1948, p. 2.
- 6 GERMAN OCCUPATION. United States and British Military Governments' proclamation was published, effective Feb. 9, giving effect to the new charter for the combined zones. This will place most reconstruction in the hands of the Frankfurt regime. There will be a High Court, a central bank, an executive committee, an Economic Council and a Council of States. *N. Y. T.*, Feb. 7, 1948, p. 1; *Monthly Report of the Military Governor* (U. S. Zone), Feb. 1948, No. 32, pp. 6-8, 36-38.
- 6 ITALY—UNITED STATES. Signed air transport agreement in Rome. *D. S. B.*, Feb. 15, 1948, p. 220. Text: *D. & S. P.*, May, 1948, pp. 112-116.
- 6/March 12 ITALY—UNITED STATES. United States notified Italy of its desire to keep in force 20 of the prewar bilateral treaties between them. This action was taken in accordance with the terms of the Treaty of Peace with Italy, Feb. 10, 1947. Text of U. S. note: *D. S. B.*, Feb. 22, 1948, pp. 248-249. Note of Mar. 12 listed additional treaties. Text: *D. S. B.*, Apr. 4, 1948, pp. 455-456.
- 7-26 ANTARCTIC REGIONS. British Foreign Office announced Argentine and Chilean rejection of British proposal that dispute over ownership of Falkland Islands be submitted for arbitration to the International Court of Justice. *N. Y. T.*, Feb. 8, 1948, p. 36. British Foreign Office issued on the 13th text of Chilean reply. Summary of British and Chilean notes: *London Times*, Feb. 14, 1948, p. 3. Chilean President landed the 17th at Sovereignty Bay to lay claim to lands now in dispute with Great Britain. *C. I. E. D.*, Feb. 7/20, 1948, p. 106. Argentina served formal notice the 18th that it did not recognize the existence of European colonies or possessions in the Antarctic. *London Times*, Feb. 19, 1948, p. 4; *N. Y. T.*, Feb. 19, p. 11. Speaking in the House of Commons the 25th Mr. Bevin stated that rival claims in the Falkland Islands Dependencies should be brought before the International Court of Justice. *London Times*, Feb. 26, 1948, p. 4; *N. Y. T.*, Feb. 26, p. 10. Argentine reply to Mr. Bevin renewed its claims. *N. Y. T.*, Feb. 27, 1948, p. 2.

- 9 GERMANY—SOVIET RUSSIA. Soviet Information Bureau issued 1st installment of its statement on the publication by the United States [Jan. 23 last] of diplomatic documents on Russo-German relations. Text: *N. Y. T.*, Feb. 11, 1948, p. 20. Text of complete statement: *New Times* (Moscow), Supplement, Feb. 18, 1948. This was also issued separately by the *Information Bulletin* of the Embassy of the U. S. S. R. (Washington), Feb. 1948, in a 61-page pamphlet.
- 10 FRANCE—SPAIN. Their common frontier was re-opened to travelers and commerce after being closed nearly two years. *N. Y. T.*, Feb. 11, 1948, p. 16; *London Times*, Feb. 11, 1948, p. 3.
- 11 SWEDEN—UNITED STATES. Exchanged notes at Washington whereby the United States agreed not to invoke certain provisions of their understanding with regard to Swedish-American trade reached June 24, 1947. Texts of notes and Memorandum of Understanding: *D. S. B.*, Feb. 22, 1948, pp. 251-253.
- 11/13 GERMAN OCCUPATION. Soviet commander announced that while reparations demands will not be cut, occupations costs will be reduced. Other concessions were listed. Summary: *N. Y. T.*, Feb. 12, 1948, pp. 1, 18. Formation of an economic council to parallel the administration set up at Frankfurt for the Anglo-American zones was ordered. *N. Y. T.*, Feb. 14, 1948, pp. 1, 4.
- 12 ARGENTINA—GREAT BRITAIN. Initialled at Buenos Aires a trade agreement to be known as the Andes Agreement. Text and exchange of notes: *Argentina No. 1* (1948), *Cmd. 7346*.
- 13 ARGENTINA—VENEZUELA. Signed two-year trade treaty at Caracas, with option for its extension. *United Nations World* (N. Y.) Apr. 1948, p. 52.
- 13 REPARATIONS (German). At close of the 15th session of the Inter-Allied Reparation Agency Assembly it was announced that Pakistan had been admitted on a temporary basis. *N. Y. T.*, Feb. 14, 1948, p. 6.
- 14 GERMAN OCCUPATION. Great Britain and United States proclaimed creation of the Bank of German States, which will start operations Mar. 1. *N. Y. T.*, Feb. 15, 1948, p. 10; *C. I. E. D.*, Feb. 7/20, 1948, p. 116.
- 16 KOREAN OCCUPATION. Radio broadcast from Pyongyang, Soviet headquarters, announced that a constitution had been presented to the North Korean People's Council, not to be finally voted until mid-March. Existence of a strong Korean army was announced. *London Times*, Feb. 17, 1948, p. 4.
- 16 PANAMA—UNITED STATES. U. S. note informed the Panamanian Government that their Defense Sites Agreement of May 18, 1942 is terminated. Panama's reply acknowledged receipt of the note. Texts: *D. S. B.*, Mar. 7, 1948, pp. 317-318.
- 17 BELGIUM—FRANCE. Signed agreement for the settlement of the French commercial debt to Belgium. *London Times*, Feb. 18, 1948, p. 3; *C. I. E. D.*, Feb. 7/20, p. 114.
- 18 HUNGARY—SOVIET RUSSIA. Signed at Moscow a treaty of friendship, cooperation and mutual assistance. *London Times*, Feb. 19, 1948, p. 3. Text: *Moscow News*, Feb. 21, 1948, p. 1.
- 18-March 2 GERMAN OCCUPATION. Foreign Ministers of Poland, Yugoslavia and Czechoslovakia issued a declaration protesting any merger of Anglo-American-French zones. Extracts: *N. Y. T.*, Feb. 19, 1948, p. 11; *London Times*, Feb. 19, 1948, p. 3. Text: Polish Embassy *Press Release* Feb. 23, 1948; *Moscow News*, Feb. 21, 1948, p. 2. On Feb. 20 Russian diplomatic repre-

- sentatives delivered notes to Czechoslovakia, Poland and Yugoslavia approving the declaration. Text: *Moscow News*, Feb. 28, 1948, p. 2. French Government published Feb. 20 its reply to Russian objection to the holding of a conference at London to consider problems in Germany. *London Times*, Feb. 21, 1948, p. 3. U. S. Memorandum of Feb. 21 to Russia rejected Russian protest of the previous week against forthcoming Anglo-American-French meeting. *N. Y. T.*, Feb. 22, 1948, p. 1. Text: p. 3; *D. S. B.*, Feb. 29, 1948, p. 286. Extracts from British reply to Russia: *N. Y. T.*, Feb. 24, 1948, p. 11. Summary: *London Times*, Feb. 24, 1948, p. 4. Russia sent identic notes to United States, Great Britain and France on the 26th, urging that Czechoslovakia, Poland and Yugoslavia be consulted in planning German future. *N. Y. T.*, Feb. 27, 1948, p. 5. Texts: *Moscow News*, Feb. 28, 1948, p. 2. U. S. note of March 2 to Yugoslavia, Czechoslovakia and Poland rejected completely their joint declaration of Feb. 18. Text: *D. S. B.*, Mar. 21, 1948, p. 384.
- 19 GREAT BRITAIN—NORWAY. Signed at London a cultural convention which will remain in force for a minimum period of 5 years. *London Times*, Feb. 20, 1948, p. 8. Text: *Norway No. 1* (1948), *Cmd.* 7338.
- 20 CHINA—SOVIET RUSSIA. Moscow radio announced that Russia considered their 1937 non-aggression pact automatically extended for another two years. *N. Y. T.*, Feb. 21, 1948, p. 2.
- 20 SAAR. United States and Great Britain reached agreement in Berlin, with France on the separation of the Saar from Germany and its economic annexation to France. Points covered by the agreement: *N. Y. T.*, Feb. 21, 1948, p. 5; *London Times*, Feb. 21, 1948, p. 4.
- 20-March 3 CZECHOSLOVAKIA. Three of the five parties in the Cabinet withdrew. *N. Y. T.*, Feb. 21, 1948, p. 1. President Beneš accepted new Communist Cabinet the 25th. *N. Y. T.*, Feb. 26, 1948, pp. 1, 2. Members: *London Times*, Feb. 26, 1948, p. 4. In a joint declaration on the 26th Great Britain, France and the United States denounced the Communist seizure of power. Text: *N. Y. T.*, Feb. 27, 1948, p. 1; *London Times*, Feb. 27, 1948, p. 4; *D. S. B.*, Mar. 7, 1948, p. 304, Czech Ambassadors in Canada and the United States resigned Mar. 3. *N. Y. T.*, Mar. 4, 1948, p. 1.
- 20-May 6 PEACE TREATY (Austrian). Deputies of the Council of Foreign Ministers met in London. *N. Y. T.*, Feb. 21, 1948, p. 1. Russian representative submitted proposals. Summary: *London Times*, Feb. 21, 1948, p. 4. United States rejected them Mar. 2 on 5 counts. Summary: *N. Y. T.*, Mar. 3, 1948, p. 8. Russian deputy continued firm in demand that Austria pay 200 million dollars in 2 years as part of the peace settlement. *N. Y. T.*, Mar. 16, 1948, p. 4. Russian delegate agreed Mar. 31 to reduce claims to indemnity to \$150,000,000, and to extend the time for payments to 6 years. *N. Y. T.*, Apr. 1, 1948, pp. 1, 12; *London Times*, Apr. 1, 1948, p. 3. Deputies reached on Apr. 5 broad agreement on 3 points: allocation to Russia for a 30-year period of properties with a production capacity of 58-60% of the present oil production; exploration and exploitation rights given to Russia; refineries of existing capacity of 420,000 tons a year should pass to Russian possession. *London Times*, Apr. 6, 1948, p. 3. These agreements were reduced to writing Apr. 6. *N. Y. T.*, Apr. 7, 1948, p. 8; *London Times*, Apr. 7, 1948, p. 3. Russia claimed the right to keep as war booty the Danube River ships seized in Austria in 1945. *N. Y. T.*, Apr. 13, 1948, p. 10. Reached agreement that Austrian armed forces should be limited to 53,000 men. Negotiations were

- suspended May 6 indefinitely on U. S. initiative. *London Times*, May 7, 1948, p. 4; *N. Y. T.*, May 7, 1948, p. 6.
- 22-24 CUSTOMS UNION. Nordic Foreign Ministers, meeting at Oslo to discuss possible formation of a Scandinavian customs union, issued a statement. Text: *London Times*, Feb. 25, 1948, p. 3.
- 23-March 5 GERMAN OCCUPATION. New Council of States (Länderrat) of the merged Anglo-American zones, met Feb. 23 and elected Hans Ehard as its chairman. *London Times*, Feb. 24, 1948, p. 3; *N. Y. T.*, Feb. 24, 1948, p. 11. The Economic Council held 1st meeting at Frankfurt and elected Erich Koehler as president on Feb. 24. *N. Y. T.*, Feb. 25, 1948, p. 9; *London Times*, Feb. 25, 1948, p. 4. Hermann Puender, Mayor of Cologne, was elected chief executive of the bizonal economic administration on Mar. 2. *N. Y. T.*, Mar. 3, 1948, p. 9; *London Times*, Mar. 3, 1948, p. 4. Council of States ratified the choice Mar. 5. *N. Y. T.*, Mar. 6, 1948, p. 4.
- 23-March 6 GERMAN OCCUPATION. British, American and French representatives held meetings in London to consider future of Germany. Adopted 7-point agenda. Summary: *London Times*, Feb. 24, 1948, p. 3. Invited the Benelux countries to join the talks. *N. Y. T.*, Feb. 24, 1948, p. 11. These countries began participation the 26th. *N. Y. T.*, Feb. 27, 1948, p. 4; *London Times*, Feb. 27, 1948, p. 4. Conference ended with agreement in principle to internationalize the Ruhr area, and on a federated form of government to protect states rights. *N. Y. T.*, Mar. 7, 1948, p. 4. Text of communique: p. 4; *D. S. B.*, Mar. 14, 1948, pp. 380-381.
- 24 BURMA—SOVIET RUSSIA. Announced decision to establish diplomatic and consular relations. *C. I. E. D.*, Feb. 21/Mar. 4, 1948, p. 148.
- 24 GREAT BRITAIN—UNITED STATES. Signed at Washington an agreement concerning the opening of certain military air bases in the Caribbean area and Bermuda to use by civil aircraft for about two years. Summary: *D. S. B.*, Mar. 7, 1948, pp. 305-306. Text, with notes: *U. S. Aviation Reports*, March, 1948, pp. 101-119.
- 24 NORWAY—UNITED STATES. Signed agreement at Washington for the settlement of Norway's lend-lease account. *D. S. B.*, Mar. 7, 1948, p. 306; *N. Y. T.*, Feb. 25, 1948, p. 4.
- 25 CUSTOMS UNION. Preparatory Commission of representatives from 9 countries met in Rome to study a prospective European customs union. *London Times*, Feb. 26, 1948, p. 3.
- 25 INDIA. Terms of the new constitution were made public. *N. Y. T.*, Feb. 26, 1948, p. 11. Short summary: *London Times*, Feb. 26, 1948, p. 4. Main provisions: India Information Services [*Press Release*] (Washington) No. 3627.
- 26 RUMANIA—UNITED STATES. U. S. note announced prewar bilateral treaties which the United States desired to keep in force or to revive. Text: *D. S. B.*, Mar. 14, 1948, pp. 356-357.
- 26-March 5 GREAT BRITAIN—GUATEMALA. British Admiralty announced sending the cruiser *Sheffield* to Belize in British Honduras to counteract recent Guatemalan claims to that area. *N. Y. T.*, Feb. 27, 1948, p. 1. Guatemalan Foreign Minister protested to the United Nations, Pan American Union and American countries. Text: *N. Y. T.*, Feb. 29, 1948, p. 12; *U. N. Press Release* SC/524. Summary: *London Times*, Mar. 1, 1948, p. 4. U. S. Department of State

revealed Mar. 1 that Guatemala had circulated a note to the American Republics calling for adjudication of the dispute by the International Court of Justice. *N. Y. T.*, Mar. 2, 1948, p. 12. British reply the 4th to Guatemalan note of Feb. 27 was published. It rejected any insinuation that its control in British Honduras was illegal. *N. Y. T.*, Mar. 5, 1948, p. 3; *London Times*, Mar. 5, 1948, p. 4. Guatemalan note of the 4th disclaimed responsibility for recent attack on British legation. *London Times*, Mar. 11, 1948, p. 3. The border was ordered closed Mar. 5 by Guatemala. *N. Y. T.*, Mar. 6, 1948, p. 2.

- 27 AGRICULTURE, INTERNATIONAL INSTITUTE OF. Final session of the 38-nation permanent committee was held in Rome before liquidating the Institute. Assets of the Institute now become the property of F. A. O. U. N. *Press Release* FAO/177; *U. N. B.*, Mar. 15, 1948, p. 252.
- 27 FRANCE—UNITED STATES. Exchanged notices of acceptance of their supplementary agreement of Oct. 28, 1947, concerning industrial property. The agreement came into force this date. *D. S. B.*, Apr. 11, 1948, p. 485.
- 27 POLAND—RUMANIA. Signed at Warsaw a cultural agreement. *Polish Facts & Figures* (London) Mar. 6, 1948, p. 3.
- 28 ARGENTINA—URUGUAY. According to statement, issued jointly by their Presidents, all future disputes between them will be submitted to arbitration. *N. Y. T.*, Feb. 29, 1948, p. 9.
- 29 PHILIPPINE REPUBLIC—UNITED STATES. Filing period for claims with the U. S.—Philippine war damage commission ended with more than one million applications. *N. Y. T.*, Mar. 1, 1948, p. 12.

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- 1/April 3 KOREAN OCCUPATION. U. S. Commander in Korea issued proclamation designating May 9 for election in the U. S. zone. Text: *D. S. B.*, Mar. 14, 1948, p. 344. U. N. Korean Commission agreed Apr. 3 to delay the elections for one day. *N. Y. T.*, Apr. 4, 1948, p. 11.
- 2 FRANCE—GREAT BRITAIN. Signed cultural convention in Paris. *London Times*, March 3, 1948, p. 3. Text: *France* No. 1 (1948), *Cmd.* 7386.
- 2 GREAT BRITAIN—POLAND. Signed trade and payments agreement in London. *Moscow News*, Mar. 7, 1948, p. 1; *Polish Facts & Figures* (London) Mar. 6, 1948, p. 1.
- 4 ARGENTINA—CHILE. Signed at Santiago, Chile, a declaration of their rights in the Antarctic. *N. Y. T.*, Mar. 5, 1948, p. 3; *London Times*, Mar. 5, p. 4 and Mar. 6, p. 4.
- 4-17 BRUSSELS CONFERENCE ON WESTERN EUROPEAN UNION. Representatives of Great Britain, France, Belgium, Netherlands and Luxembourg met at Brussels. *London Times*, Mar. 5, 1948, p. 4. Conference ended with signature of a 50-year treaty of collective military aid and economic and social cooperation. *N. Y. T.*, Mar. 18, 1948, pp. 1, 12. Text of treaty: p. 13; *London Times*, Mar. 18, 1948, p. 3; *G. B. M. S.* No. 2 (1948), *Cmd.* 7367; *D. S. B.*, May 9, 1948, pp. 600-602.
- 6 SIAMESE RECOGNITION. Granted by the United States in exchange of letters at Bangkok. *D. S. B.*, Mar. 14, 1948, p. 360.
- 6-April 6 GERMAN OCCUPATION. Soviet note of the 6th considered in principle the agreements [reached at Feb. 23-Mar. 6 conference in London] incapable of having legality and international authority. *London Times*, Mar. 9, 1948, p. 4.

- Text: *Moscow News*, Mar. 10, 1948, p. 2. U. S. note of Mar. 25 upheld the right of the three Powers to make decisions. Text: *D. S. B.*, Apr. 4, 1948, pp. 457-459; *N. Y. T.*, Mar. 27, 1948, p. 4. British note repudiated Russian charges of violating the Potsdam agreement and disrupting control machinery in Germany. Excerpts: *London Times*, Mar. 27, 1948, p. 4. French note of Apr. 6 also rejected Russian protest of March 6. Summary: *N. Y. T.*, Apr. 7, 1948, p. 10; *London Times*, Apr. 7, 1948, p. 3.
- 6/April 13 RUMANIA. Published draft constitution. Principle items: *N. Y. T.*, Mar. 7, 1948, p. 24. Text: *La Documentation Française. Notes Documentaires et Etudes*, No. 920. Assembly adopted the constitution and elected Petru Groza as Premier. *N. Y. T.*, Apr. 14, 1948, p. 9.
- 7 DODECANESE ISLANDS. Formally returned for the first time since 1522 to Greek control in accordance with terms of the Italian peace treaty. *N. Y. T.*, Mar. 8, 1948, p. 1.
- 8 BULGARIA—UNITED STATES. United States notified Bulgaria of the prewar bilateral treaties which the United States desired to keep in force or to revive. Text of statement: *D. S. B.*, Mar. 21, 1948, pp. 383-384.
- 8 TANGIER. British Embassy at Rome issued statement to the effect that since no objection exists among the signatories of the Act of Algeciras, Italy has now been invited by France and Great Britain to resume its place on the committee of control of the International Zone. *London Times*, Mar. 9, 1948, p. 3.
- 9 HUNGARY—UNITED STATES. United States notified Hungary of the prewar bilateral treaties which it desires to keep in force or to revive. Text: *D. S. B.*, Mar. 21, 1948, pp. 382-383.
- 9-12 INDONESIA. Interim Government for the Netherlands East Indies was installed the 9th. Personnel: *London Times*, Mar. 10, 1948, p. 3. Talks between Dutch and Indonesian Republic representatives opened the 12th to discuss possible participation of the Republic. *N. Y. T.*, Mar. 13, 1948, p. 4.
- 12 FINLAND—GREAT BRITAIN. British note listed prewar agreements which Great Britain desired to keep in force or to revive. Text: *G. B. M. S. No. 5 (1948)*, *Cmd. 7395*.
- 12 GREAT BRITAIN—HUNGARY. British note listed prewar agreements which Great Britain desired to keep in force or to revive. Text: *G. B. M. S. No. 5 (1948)*, *Cmd. 7395*.
- 13 BULGARIA—GREAT BRITAIN. Great Britain sent note giving notification of its desire to keep in force prewar agreement regarding money orders, reached by exchange of notes on May 7 and June 7, 1925. Text: *G. B. M. S. No. 5 (1948)*, *Cmd. 7395*.
- 13 GREAT BRITAIN—ITALY. British note listed prewar agreements which Great Britain desired to keep in force or to revive. Text: *G. B. M. S. No. 5 (1948)*, *Cmd. 7395*.
- 13 GREAT BRITAIN—RUMANIA. British note listed prewar agreements which Great Britain desired to keep in force or to revive. Text: *G. B. M. S. No. 5 (1948)*, *Cmd. 7395*.
- 15 GREAT BRITAIN—TRANS-JORDAN. Signed 20-year treaty of alliance at Amman. *London Times*, Mar. 18, 1948, p. 3; *N. Y. T.*, Mar. 18, 1948, p. 17. Text: *Trans-Jordan No. 1 (1948)*, *Cmd. 7368*.

- 15-April 16 EUROPEAN ECONOMIC COOPERATION COMMITTEE. Opened 2d session Mar. 15 in Paris. *N. Y. T.*, Mar. 16, 1948, p. 1; *London Times*, Mar. 16, 1948, p. 4. Invited on the 16th the western zones of Germany to join in the work of the Committee and to be represented in its permanent organization. Recessed the 16th, following appointment of working party to draft agreements for future collaboration. *N. Y. T.*, Mar. 17, 1948, p. 1. Adopted report reviewing progress made in recovery. P. 3. Summary: *London Times*, Mar. 18, 1948, p. 3. Re-convened Apr. 16 and signed Final Act, Convention for European Economic Cooperation, establishing Organization for European Economic Cooperation and supplementary protocols on privileges and immunities and financial regulations of the Organization. Texts: Dept. of State *Economic Cooperation Series* 7; *G. B. M. S.* No. 4 (1948), *Cmd.* 7388. Text of resolutions adopted: pp. 18-25.
- 16 NEW ZEALAND—UNITED STATES. Signed at Washington a treaty for the avoidance of double taxation on incomes. *N. Y. T.*, Mar. 17, 1948, p. 3; *D. S. B.*, Apr. 11, 1948, p. 486.
- 17 SOVIET RUSSIA—SWITZERLAND. Signed trade and commercial agreements. *N. Y. T.*, Mar. 18, 1948, p. 18; *C. I. E. D.*, Mar. 5/18, 1948, p. 192. Brief summaries: *N. Y. T.*, Mar. 25, 1948, p. 20; *Moscow News*, Mar. 20, 1948, p. 2.
- 18-April 1 BULGARIA—SOVIET RUSSIA. Signed at Moscow a 20-year treaty of friendship, cooperation and mutual assistance, subject to extension. *London Times*, Mar. 19, 1948, p. 3; *N. Y. T.*, Mar. 19, 1948, p. 5. Text: *Moscow News*, Mar. 20, 1948, p. 1. Bulgaria ratified Apr. 1. *N. Y. T.*, Apr. 2, 1948, p. 14.
- 18-23 CUSTOMS UNION. At opening meeting of 3d session announcement was made the 18th that Norway and Sweden had joined as full members the study group for a European customs union. *N. Y. T.*, Mar. 20, 1948, p. 3; *London Times*, Mar. 19, 1948, p. 4. The session ended the 23d. Report on this session to be sent to member countries and to the United States and the Committee of European Economic Cooperation. Next session to be held Sept. 1-15. *London Times*, Mar. 24, 1948, p. 4.
- 19 CUBA—GREAT BRITAIN. Signed at Havana an air services agreement. *N. Y. T.*, Mar. 20, 1948, p. 3. Text: *Cuba* No. 1 (1948), *Cmd.* 7393.
- 19 FRANCE—POLAND. Signed trade agreement and 4 protocols at Paris. Short summaries: *Polish Facts & Figures* (London) Mar. 27, 1948, p. 1.
- 20 FRANCE—ITALY. Signed in Turin commercial agreements. *London Times*, Apr. 2, 1948, p. 3. Signed protocol relating to projected customs union and trade agreements. *C. I. E. D.*, Mar. 19/Apr. 8, 1948, p. 228.
- 20/22 TRIESTE. In a joint statement on Mar. 20, United States, Great Britain and France announced that they had proposed to Russia and Italy that the Free Territory be returned to Italy. Text: *London Times*, Mar. 22, 1948, p. 3; *U. N. Doc.* S/707; *D. S. B.*, Mar. 28, 1948, p. 425; *N. Y. T.*, Mar. 21, 1948, p. 3. Texts of U. S. memorandum of Mar. 20 and Italian reply: *D. S. B.*, Apr. 4, 1948, pp. 453-454. Yugoslav Foreign Minister stated his country would be willing to consider the return of Trieste to Italy, if Gorizia were given to Yugoslavia. *N. Y. T.*, Mar. 23, 1948, p. 1. Text of Yugoslav note on the proposal: p. 4; Extracts: *London Times*, Mar. 23, 1948, p. 4.
- 22-24 CZECHOSLOVAKIA—POLAND. Economic Council, set up as a result of the signing of agreements on economic cooperation in July, 1947, held first meeting in Prague. *Polish Facts & Figures* (London) Apr. 3, 1948, p. 3.

- 23 GREAT BRITAIN—NETHERLANDS. Signed agreement by which Great Britain will pay about £5 million in settlement of most of the outstanding claims arising from the use of Dutch vessels chartered during the war. *C. I. E. D.*, Mar. 19/Apr. 8, 1948, pp. 219-220.
- 24 PHILIPPINE REPUBLIC—UNITED STATES. Signed agreement at Manila for the program of educational exchanges authorized by the Fulbright Act. *D. S. B.*, Apr. 11, 1948, pp. 488-489.
- 30 PALESTINE. International Red Cross spokesman announced that Arabs and Jews had promised to observe the Geneva Convention rules of war in their conflict. *N. Y. T.*, Mar. 31, 1948, pp. 1, 3.
- 30-May 2 INTERNATIONAL AMERICAN CONFERENCE. Ninth conference was held at Bogotá, Colombia. Elected Foreign Minister Gomez of Colombia president. Voted to carry on its work in six commissions. *N. Y. T.*, Mar. 31, 1948, pp. 1, 15. U. S. delegates: *D. S. B.*, Apr. 11, 1948, pp. 473-474. Text of Secretary Marshall's formal address of Apr. 1 urging American nations to put their own need of help after that of Europe: *N. Y. T.*, Apr. 2, 1948, p. 12; *D. S. B.*, Apr. 11, 1948, pp. 469-473. Argentina and Guatemala urged on Apr. 7 elimination of European colonies in the Western Hemisphere. *N. Y. T.*, Apr. 9, 1948, p. 14. The conference was interrupted on the 9th by revolution in the city. *N. Y. T.*, Apr. 10, 1948, p. 1. Resumed the 14th. *N. Y. T.*, Apr. 15, 1948, pp. 1, 17. Signed on the 30th Charter of the Organization of American States, Pact of Bogotá [pacific settlement] and 2 other agreements [civil and political rights of women]. *N. Y. T.*, May 1, 1948, pp. 1, 7. Texts of resolution on American colonies and declaration on defense of democracy: p. 7. Text of Charter: *N. Y. T.*, May 3, 1948, p. 16; *D. S. B.*, May 23, 1948, pp. 666-673. Conference closed May 2 with signature of an economic pact. *N. Y. T.*, May 3, 1948, p. 17. Text: Dept. of State [*Press Release*], May 12, 1948, No. 367.
- 31 WAR CRIMES. United Nations Commission for the Investigation of War Crimes was dissolved. *London Times*, Apr. 1, 1948, p. 3.
- 31-April 7 GERMAN OCCUPATION. U. S. Military Government rejected Soviet proposals of Mar. 30 to allow Soviet inspection of trains and traffic into and out of the Russian zone. *N. Y. T.*, Apr. 1, 1948, pp. 1, 14. Russian zone authorities announced Mar. 31 new regulations for control. British Deputy Military Governor sent letter objecting. *London Times*, Apr. 1, 1948, p. 4. U. S. and Soviet commander exchanged notes Apr. 4 regarding Russian offer to talk over difficulties brought about by ground blockades of traffic imposed by Russia. *London Times*, Apr. 5, 1948, p. 4; *N. Y. T.*, Apr. 5, 1948, p. 1. Texts of notes: p. 5. Russian announcement stated that all German mail from Berlin for western zones must receive Russian clearance. *N. Y. T.*, Apr. 8, 1948, p. 17.
- April, 1948
- 3-21 EUROPEAN RECOVERY PROGRAM. President Truman signed the Foreign Assistance Act of 1948. *N. Y. T.*, Apr. 4, 1948, p. 1; *London Times*, Apr. 5, 1948, p. 4; *D. S. B.*, Apr. 11, 1948, p. 468. Paul G. Hoffman was sworn in as Administrator for Economic Cooperation on the 9th. *N. Y. T.*, Apr. 10, 1948, p. 2. W. Averell Harriman was named the Chief European Representative of the Economic Cooperation Administration. *N. Y. T.*, Apr. 22, 1948, p. 1.
- 5 EUROPEAN RECOVERY PROGRAM. Joint statement of Foreign Minister Bidault of France and Prime Minister Attlee of Great Britain to Secretary of State Marshall pledged cooperation. *N. Y. T.*, Apr. 6, 1948, p. 9. Text: *London Times*, Apr. 6, 1948, p. 4.

- 5-May 1 GERMAN OCCUPATION. Russian commander in Berlin expressed regret to British commander for the accident in which Russian and British planes collided over Berlin, killing 15. *N. Y. T.*, Apr. 6, 1948, p. 1. Text of communiqué: *London Times*, Apr. 6, 1948, p. 4. On the 8th Soviet Commander charged the British with "provocative aims" in trying to blame Russia and called on the British to issue order to their planes to follow lanes outlined by the Allied Control Authority. *N. Y. T.*, Apr. 8, 1948, p. 1. British note of the 9th agreed to conference. Text: *N. Y. T.*, Apr. 10, 1948, p. 4; *London Times*, Apr. 10, 1948, p. 4. Joint inquiry broke down when the British were unable to accept Russian suggestion that American and German witnesses should not be heard. *London Times*, Apr. 14, 1948, p. 4. British court of inquiry report of the 19th found Soviet aviator at fault, while Soviet report blamed the British. *N. Y. T.*, Apr. 20, 1948, p. 9 and Apr. 21, p. 18. Text of report of the British Court: *Germany No. 1* (1948), *Cmd.* 7384. British note of May 1 to Russia claimed compensation for the loss of life and property in the crash. *C. I. E. D.*, Apr. 23/May 6, 1948, p. 290.
- 6 BRAZIL—INDIA. Announced decision to exchange diplomatic missions at legation level. India Information Services [*Press Release*] (Washington) No. 3661.
- 6/28 FINLAND—SOVIET RUSSIA. Signed at Moscow a 10-year mutual aid treaty. *N. Y. T.*, Apr. 7, 1948, pp. 1, 7. Text: p. 6; *U. S. S. R. Information Bulletin* (Washington) Apr. 14, 1948, p. 200; *Moscow News*, Apr. 9, 1948, p. 1. Finland ratified the 28th. *N. Y. T.*, Apr. 29, 1948, p. 10.
- 9-16 TRIESTE. In notes to Russia and Italy, United States, Great Britain and France suggested conference in May at Paris to draft protocol to the Italian peace treaty providing for the return of Trieste to Italy. *N. Y. T.*, Apr. 10, 1948, pp. 1, 4. Text of U. S. notes: *D. S. B.*, Apr. 18, 1948, pp. 521-522. Russian note of April 13 rejected Anglo-American-French proposal [Mar. 20] to return Trieste to Italy. *N. Y. T.*, Apr. 14, 1948, pp. 1, 3. United States replied April 16, inviting Russia a third time to agree to the proposal. Texts of both notes: *D. S. B.*, Apr. 25, 1948, p. 549. France and Great Britain also sent notes the 16th. Extracts from British note: *London Times*, Apr. 17, 1948, p. 3.
- 12 POLAND—YUGOSLAVIA. Signed trade and payments agreements, regulating exchange of goods and payments up to Dec. 31, 1948. *Polish Facts & Figures* (London) Apr. 17, 1948, p. 4.
- 15 BRAZIL—UNITED STATES. Signed at Washington a final lend-lease settlement agreement. *D. S. B.*, Apr. 25, 1948, p. 552.
- 16-17 EUROPEAN ECONOMIC COOPERATION ORGANIZATION. Council held first and second meetings. Paul-Henri Spaak (Belgium) was elected chairman and Paris was selected as headquarters. *N. Y. T.*, Apr. 17, 1948, pp. 1, 5; *London Times*, Apr. 17, 1948, p. 4. The second meeting was concerned with the scope of future work. *London Times*, Apr. 19, 1948, p. 4.
- 17 WESTERN EUROPEAN UNION. Foreign Ministers of the 5 Powers, signatory to the treaty of March 17 last, met in Paris and agreed on permanent consultative arrangements. Meetings will rotate from one capital city to another. Text of announcement after the meeting: *London Times*, Apr. 19, 1948, p. 4; *D. S. B.*, May 9, 1948, p. 602.
- 19 CHINA. Generalissimo Chiang Kai-shek was elected first constitutional President. *N. Y. T.*, Apr. 20, 1948, p. 15.

Text: U. N. Doc. E/622. Texts of comments by various Governments on the draft convention and communications from non-governmental organizations: U. N. Doc. E/623.

- 3-April 29 U. N. PALESTINE COMMISSION. Decided to send note to Great Britain protesting British refusal to let the Commission enter Palestine immediately and asking a reconsideration of its decision. *N. Y. T.*, Feb. 4, 1948, p. 10. Decided Feb. 7 to appeal directly to Great Britain for permission to train militia before May 15. *N. Y. T.*, Feb. 8, 1948, p. 1. Special report of Feb. 16 to the Security Council gave notice that the Commission would not be able to carry out the partition unless adequate military force is available. *U. N. B.*, Mar. 1, 1948, pp. 169-171; *N. Y. T.*, Feb. 17, 1948, p. 1. Text: p. 4; U. N. Docs. S/676 and A/AC.21/9. Text of 2d monthly progress report: U. N. Docs. S/695 and A/AC.21/14. Advance party of the Commission arrived in Jerusalem on Mar. 3. *N. Y. T.*, Mar. 4, 1948, pp. 1, 4. Agreed Mar. 31 to act immediately to set up a special police force for Jerusalem for service when the British withdraw May 15. *N. Y. T.*, Apr. 1, 1948, pp. 1, 7. Decided Apr. 9 to proceed with attempts to set up provisional councils of government in the proposed states. *N. Y. T.*, Apr. 10, 1948, p. 7. Commission's report to the General Assembly contained warning of chaos, violence, etc. *N. Y. T.*, Apr. 14, 1948, pp. 1, 3. Excerpts: p. 4. Text: U. N. Doc. A/532 and Add. 1. Text of report on food situation in Palestine: U. N. Doc. S/720. Decided Apr. 14 to proceed immediately with steps toward formation of an emergency police force for Jerusalem to exercise functions after May 15. *U. N. Press Release* PAL/160. Pablo Azcarate, chairman of the group sent to Palestine, reported to the Commission that partition is in effect actually. *N. Y. T.*, Apr. 30, 1948, p. 4.
- 17-21 F. A. O. Fourth conference of the European national committees met in Rome, with delegates and observers from 18 countries. *London Times*, Feb. 18, 1948, p. 3 and Feb. 23, p. 3; *N. Y. T.*, Feb. 22, 1948, p. 21.
- 18-March 10 U. N. TRUSTEESHIP COUNCIL. Second part of 2d session was held at Lake Success. *U. N. B.*, Mar. 1, 1948, pp. 171-173. Provisional agenda: U. N. Doc. T/120. Text of Draft Statute for the City of Jerusalem: U. N. Doc. T/118/Rev. 2. Formal approval of the Draft Statute for Jerusalem and appointment of a Governor were deferred until next meeting in April. *N. Y. T.*, Mar. 11, 1948, p. 13.
- 19-March 6 U. N. MARITIME CONFERENCE. Met at Geneva. Preparatory memorandum: U. N. Doc. E/CONF.4/4. U. S. delegates: *D. S. B.*, Feb. 29, 1948, p. 286. Provisional rules of procedure: U. N. Doc. E/CONF.4/6. Conference chairman announced Mar. 1 that Panama's delegation had withdrawn because of alleged failure to recognize Panama's rights and interests as a maritime nation. *N. Y. T.*, Mar. 2, 1948, p. 13; *London Times*, Mar. 3, 1948, p. 3. Decided Mar. 4 to set up an agency to handle shipping matters, to be known as the Intergovernmental Maritime Consultative Organization with headquarters in London. List of countries on the preparatory committee: *N. Y. T.*, Mar. 5, 1948, p. 4; *U. N. Press Release* EC/373. Conference closed with signature of a convention which, when ratified by 21 states, will bring into existence the Organization. *U. N. B.*, Mar. 15, 1948, p. 237. Signatories (18): p. 239. Texts of convention on the Organization, Final Act, Draft Agreement on relationship with the United Nations and resolution of establishment of the Preparatory Committee: U. N. Docs. E/CONF.4/61, 62, 57 and 58, respectively. Report on the conference: *D. S. B.*, Apr. 18, 1948, pp. 495-499. Texts of Convention and Annexes of Final Act: pp. 499-505, 523.

- 19-March 15 U. N. GENERAL ASSEMBLY. Interim Committee. K. S. S. Menon of India, chairman of the Korean Commission, reported to the Committee and outlined alternative courses. *N. Y. T.*, Feb. 20, 1948, pp. 1, 14. Norway called for a special session of the General Assembly. *N. Y. T.*, Feb. 26, 1948, p. 8. Adopted resolution calling on the Korean Commission to go ahead with setting up a national government in spite of Russia's non-coöperation in the northern area. *N. Y. T.*, Feb. 27, 1948, p. 1. Text: p. 10; *D. S. B.*, Mar. 7, 1948, pp. 297-298; U. N. Doc. A/AC.18/31. Created on Mar. 2 a 15-nation committee to formulate a rule of international law for settling political disputes by peaceful methods. Member nations: *N. Y. T.*, Mar. 3, 1948, p. 7; *London Times*, Mar. 3, 1948, p. 3. Text of resolution: U. N. Doc. A/AC.18/35. Adopted Mar. 15 a resolution establishing a subcommittee of 17 members on voting in the Security Council. *U. N. B.*, Apr. 1, 1948, p. 272. Text: U. N. Doc. A/AC.18/45. Text of U. S. proposals on the problem of voting in the Security Council and provisional list of categories of decisions which United States proposed should be by affirmative vote of 7 members: *D. S. B.*, Mar. 28, 1948, pp. 412-414; U. N. Doc. A/AC.18/41.
- 20-April 23 U. N. BALKAN COMMITTEE. Letters of Feb. 20 and 23 to Greece, Albania, Bulgaria and Yugoslavia offered good offices in re-establishment of normal diplomatic and good-neighborly relations between Greece and its northern neighbors. Text: U. N. Press Release BAL/218. Texts of replies: U. N. Press Releases BAL/230, 296, 304 and 311. Adopted March 27 a report on refugees. *U. N. B.*, Apr. 15, 1948, p. 344. Decided Apr. 21 to offer Bulgaria its good offices by asking cooperation in settlement of the border incident at Evros. U. N. Press Release BAL/307. Sent note to Albania Apr. 23 indicating that Albania's failure to cooperate in any investigations cast doubt on the statement that complaints against Greece were based on fact, and that Albania's attitude was difficult to reconcile with the desire of the government to become a member of the United Nations. *N. Y. T.*, Apr. 24, 1948, p. 4. Text: U. N. Press Release BAL/309.
- 23-28 F. A. O. Fisheries and Nutrition conferences opened Feb. 23 at Baguio, Philippine Republic. *N. Y. T.*, Feb. 24, 1948, p. 8. U. S. delegations: *D. S. B.*, Feb. 29, 1948, p. 282. Conferences closed Feb. 28. U. N. Press Release FAO/178.
- 24-May 6 U. N. SECURITY COUNCIL (Palestine). U. S. representative rejected direct enforcement of partition and stated U. N. force should be used only to enforce peace. Colombia suggested possibility of a special session of the General Assembly. *N. Y. T.*, Feb. 25, 1948, pp. 1, 3. Text of Mr. Austin's statement: p. 2; *D. S. B.*, Mar. 7, 1948, pp. 294-297. Voted Mar. 5 to have the Big 5 members consult and submit to the Council by Mar. 15 recommendations concerning Palestine. *N. Y. T.*, Mar. 6, 1948, pp. 1, 2. Text of resolution: p. 2; *D. S. B.*, Mar. 14, 1948, p. 344; U. N. Doc. S/691. Mr. Austin issued statement Mar. 9 that Russia's demand for measures to carry out the partition prejudged the issues before consultation had gotten under way. Text: *N. Y. T.*, Mar. 10, 1948, pp. 1, 3. On the 19th U. S. member urged U. N. to abandon the partition plan and to set up a U. N. trusteeship. *U. N. B.*, Apr. 1, 1948, p. 283; *London Times*, Mar. 20, 1948, p. 4; *N. Y. T.*, Mar. 20, 1948, p. 1. Text: p. 2; *D. S. B.*, Mar. 28, 1948, pp. 402-407. Voted Apr. 1 to call an emergency session of the General Assembly to reconsider the question. Secretary-General Lie selected Apr. 16 for the opening date. *N. Y. T.*, Apr. 2, 1948, pp. 1, 11; *London Times*, Apr. 3, 1948, p. 4. Resolved to call upon Jewish Agency for Palestine and Arab Higher Committee to arrange for a

- truce. Text: U. N. *Doc.* S/714; *U. N. B.*, Apr. 15, 1948, p. 309. United States submitted Apr. 5 tentative proposals for temporary U. N. trusteeship under which certain countries would send troops if necessary to defend Palestine and to maintain order. Digest of proposals: *N. Y. T.*, Apr. 6, 1948, p. 11. Adopted resolution calling on all interested parties to cease acts of violence and to establish peace and order. Text: U. N. *Doc.* S/723; *U. N. B.*, May 1, 1948, p. 379. Resolved Apr. 23 to set up a Truce Commission composed of representatives of those members of the Council having career consular officers in Jerusalem [U. S., Belgium, France] and to request a report to the Council within 4 days. *U. N. B.*, May 15, 1948, p. 413; *N. Y. T.*, Apr. 24, 1948, p. 4. Text of resolution: U. N. *Doc.* S/727; *D. S. B.*, May 9, 1948, p. 594. The Truce Commission reported May 6 it had found no evidence confirming Jewish charges of an Arab invasion. *N. Y. T.*, May 7, 1948, p. 8.
- 25 ECONOMIC COMMISSION FOR LATIN AMERICA. Establishment was approved by the U. N. Economic and Social Council. Text of resolution: U. N. *Doc.* E/667. Terms of Reference: U. N. *Doc.* E/712/Rev. 1. Provisional rules of procedure: U. N. *Doc.* E/CN.12/2.
- 28/April 23 U. N. SECURITY COUNCIL (Indonesian Question). Adopted resolution requesting its Committee to pay particular attention to the political developments in Western Java and Madura and to report to the Council at frequent intervals. *U. N. B.*, Mar. 15, 1948, p. 223. Text: p. 221; U. N. *Doc.* S/689. Voted to maintain its offer of good offices and to request the Committee to keep the Council informed of the progress of the political settlement in Indonesia. *N. Y. T.*, Feb. 29, 1948, pp. 1, 27. Text of resolution: p. 27; *U. N. B.*, Mar. 15, 1948, p. 221; U. N. *Doc.* S/678. Report of Apr. 23 surveyed recent political developments in Western Java. *U. N. B.*, May 15, 1948, pp. 406-407. Text: U. N. *Doc.* S/729.
- March, 1948
- 1-12 F. A. O. Fifteen nations were represented at the Rice Conference at Manila. J. M. Elizalde (Philippine Republic) was elected chairman. *N. Y. T.*, Mar. 2, 1948, p. 8. Adjourned after adopting proposal for establishing an international rice council for studying rice problems, but with no jurisdiction over trade matters. *N. Y. T.*, Mar. 13, 1948, p. 5; *U. N. B.*, Apr. 1, 1948, p. 295.
- 6 U. N.—INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION. Text of draft agreement on relationship: U. N. *Doc.* E/CONF.4/57.
- 8 ECONOMIC COMMISSION FOR THE MIDDLE EAST. U. N. Economic and Social Council voted to set up an *ad hoc* committee to study factors bearing on establishment of such a commission. *U. N. B.*, Mar. 15, 1948, p. 237. Text of resolution: U. N. *Doc.* E/753.
- 9 U. N. SECURITY COUNCIL (Trieste). Agreed to postpone consideration of appointment of a Governor of the Free Territory until requested by any member of the Council. U. N. *Press Release* SC/535.
- 10-15 U. N.—CZECHOSLOVAKIA. Jan Papanek (Czechoslovakia) demanded in the Security Council that the Council investigate the communist coup in his homeland. Secretary-General Lie shelved the 1100-word request on the ground that it was a non-governmental communication. *N. Y. T.*, Mar. 11, 1948, p. 1. Text: p. 2. Czechoslovak Government informed the U. N. Mar. 13 of dismissal of Dr. Papanek as its permanent representative as of Mar. 10. Text of note: *N. Y. T.*, Mar. 14, 1948, p. 1. On Mar. 15 credentials of Vladimir Houdek were accepted. *N. Y. T.*, Mar. 16, 1948, p. 12.

- 12-April 8 U. N. SECURITY COUNCIL (Czechoslovak Question). Chile sent letter to the Secretary-General calling on the Council to act in the Czechoslovak situation. Text: U. N. Doc. S/694; *N. Y. T.*, Mar. 13, 1948, p. 4; *D. S. B.*, Mar. 28, 1948, pp. 409-411. Text of additional note of Mar. 15 embodying Dr. Papanek's presentation of his view of the situation: U. N. Doc. S/696. Voted Mar. 17 (9-2) to investigate the Communist coup in Czechoslovakia. *N. Y. T.*, Mar. 18, 1948, p. 1. Text of Russian, British and U. S. statements: p. 20. Dr. Papanek appealed Mar. 22 to the U. N. to blame Russia for the coup, after which Sir Alexander Cadogan declared that the Communist sweep must be stopped. *N. Y. T.*, Mar. 23, 1948, pp. 1, 13. Excerpts from statements: p. 12. Summary of Dr. Papanek's statement: *U. N. B.*, Apr. 1, 1948, pp. 260-262. Chilean delegate accused Russia of being responsible and urged the Council to establish a committee to hear testimony of 6 Czech democratic leaders who left the country after the coup. Extracts: *N. Y. T.*, Apr. 1, 1948, p. 4. Voted 9-0, with 2 abstentions to extend a formal invitation to the Czechoslovak Government to state its case. *N. Y. T.*, Apr. 7, 1948, p. 13; *U. N. B.*, Apr. 15, 1948, p. 326. Text of resolution: U. N. Doc. S/711; *D. S. B.*, Apr. 18, 1948, p. 517. Texts of letter of invitation and reply of rejection: U. N. Doc. S/718.
- 15-16 F. A. O. Conference at Baguio, Philippine Republic, adopted constitution for South-East Asia Regional Organization. Recommended that seat of the organization should rotate every 2 years among member states. *U. N. B.*, Apr. 1, 1948, p. 295.
- 23 U. N.—UNITED STATES. Signed headquarters loan agreement. *U. N. B.*, Apr. 1, 1948, p. 278. Text: U. S. 80th Cong., 2d session. *S. J. Res.* 212, pp. 4-8; *Cong. Rec.* (daily) June 18, 1948, p. 8911.
- 23-April 21 U. N. FREEDOM OF INFORMATION CONFERENCE. Opened Mar. 23 at Geneva. Elected Carlos P. Romulo (Philippine Republic) as President. *U. N. B.*, Apr. 1, 1948, pp. 273-274. U. S. delegation: *D. S. B.*, Mar. 21, 1948, p. 378. Delegations: U. N. Doc. E/CONF.6/34/Rev. 2. Draft rules of procedure: U. N. Doc. E/CONF.6/3. Adopted Apr. 21 three conventions on (1) Gathering and International Transmission of News (2) Institution of the International Right of Correction and (3) Freedom of Information. *U. N. Press Release* SOC/479. Closed with adoption of committee report, which will be submitted to the Economic and Social Council. *N. Y. T.*, Apr. 22, 1948, p. 3; *U. N. B.*, May 1, 1948, p. 349. Text of Final Act embodying texts of conventions, etc.: U. N. Doc. E/CONF.6/79; Dept. of State *International Organization and Conference Series* III, 5.
- 24 U. N. TRADE AND EMPLOYMENT CONFERENCE. Fifty-three of the 57 nations represented at the conference [which opened Nov. 21, 1947] signed at Havana the charter for the establishment of the International Trade Organization. *U. N. B.*, May 1, 1948, p. 365. Argentina and Poland declined to sign; Turkey postponed signature due to absence of chief delegate and Iceland could not sign, having been represented only by an observer. *London Times*, Mar. 25, 1948, p. 4; *N. Y. T.*, Mar. 25, 1948, p. 1. Summary: p. 2. Some countries also signed protocols designed to bring the General Agreement on Trade and Tariffs into line with the I. T. O. Charter. P. 3. Text of Final Act, Charter and resolutions: U. N. Doc. E/CONF.2/78; Dept. of State *Commercial Policy Series* No. 113.
- 25 I. B. R. D.—CHILE. The Bank approved 2 loans totalling \$16,000,000. *U. N. B.*, Apr. 15, 1948, p. 317.

- 25 I. C. J. (Corfu Channel Case). Rendered judgment rejecting preliminary objection by Albania and set dates for filing briefs. *N. Y. T.*, Mar. 26, 1948, p. 5; *U. N. B.*, Apr. 15, 1948, pp. 334-335.
- 27 U. N.—GREECE. Greece filed formal complaint against abductions of Greek children and their removal to Soviet-bloc countries. *N. Y. T.*, Mar. 29, 1948, p. 7. Text: *U. N. Press Release* BAL/290.

April, 1948

- 5 U. N. ATOMIC ENERGY COMMISSION. Working Committee by vote of 9-2 voted to drop consideration of the Soviet proposals made in June, 1947 and adjourned *sine die*. *N. Y. T.*, Apr. 6, 1948, p. 12; *U. N. B.*, Apr. 15, 1948, pp. 314-315. Text of resolution: *U. N. Doc.* AEC/C.1/76.
- 5-16 F. A. O. Council held 2d session in Washington. *U. N. B.*, May 1, 1948, pp. 375-377. Heads of delegations: *U. N. Press Release* FAO/196. Voted that 4th session of the Conference will open in Washington Nov. 15. *U. N. Press Release* FAO/213. Report on the meeting: *U. N. B.*, May 1, 1948; pp. 375-377.
- 5-23 U. N. SOCIAL COMMISSION. Third session was held at Lake Success. Elected officers for 1948. *U. N. B.*, Apr. 15, 1948, p. 302. Provisional agenda: *U. N. Doc.* E/CN.5/43/Rev. 1. Adopted resolution on the 12th requesting preparation of a comprehensive convention unifying existing instruments for suppression of traffic in women and children, etc. Text: *U. N. Doc.* E/CN.5/78. Adopted recommendations for the transfer to the U. N. of the functions exercised by the French Government under international agreement of May 18, 1904 and international convention of May 4, 1910 for the suppression of white slave traffic, and international agreement of May 4, 1910 for suppression of obscene publications. Text: *U. N. Doc.* E/CN.5/98. Completed session by adopting 16-1, with minor changes the Rapporteur's draft report. Text: *U. N. Docs.* E/CN.5/100 and E/779; *E. S. C. O. R.*, 3d yr., 7th sess., Supp. No. 8. Article: *U. N. B.*, May 15, 1948, pp. 416-418. List of documents considered at the session: *U. N. Doc.* E/CN.5/99.
- 5-May 10 GENOCIDE. *Ad hoc* Committee on Genocide met at Lake Success to prepare a draft convention. *N. Y. T.*, Apr. 7, 1948, p. 11; *U. N. B.*, Apr. 15, 1948, p. 302. Elected Mr. Makto (U. S.) as Chairman and Mr. Akzoul (Lebanon) as Rapporteur. *U. N. Doc.* E/AC.25/SR.1. Provisional agenda: *U. N. Doc.* E/AC.25/4. Committee adopted provisional definition of genocide. Text: *U. N. Doc.* E/AC.25/SR.3, pp. 10-11. Russia and Venezuela opposed establishment of an international court to try cases of genocide. *N. Y. T.*, Apr. 14, 1948, p. 11. Session closed May 10. Text of report and draft convention: *U. N. Doc.* E/794.
- 6-16 F. A. O. Special session of F. A. O. Conference was held in Washington and chose Sir Carl Berendsen (New Zealand) as chairman. *U. N. Press Release* FAO/197. Elected Norris E. Dodd (U. S.) to succeed Sir John Boyd Orr as Director General and admitted Turkey and Ceylon as members. *N. Y. T.*, Apr. 15, 1948, p. 10; *U. N. B.*, May 1, 1948, pp. 375, 388.
- 7 W. H. O. World Health Organization came into official existence with notification that Mexico, Ukraine and Byelorussia had ratified the constitution. *N. Y. T.*, Apr. 8, 1948, p. 5; *U. N. B.*, Apr. 15, 1948, p. 325.
- 8 I. B. R. D.—AUSTRIA. The Bank agreed to admit Austria which will have until Aug. 31 to accept. *U. N. Press Release* IB/51.
- 8 I. M. F.—AUSTRIA. The Fund agreed to admit Austria which will have until Aug. 31 to accept. *U. N. Press Release* IB/51.

- 10 U. N. SECURITY COUNCIL. Russia vetoed Italian application for membership. Burmese application was approved by the Council. *N. Y. T.*, Apr. 11, 1948, p. 1; *London Times*, Apr. 12, 1948, p. 3; *U. N. B.*, May 1, 1948, p. 367.
- 12-20 U. N. TRANSPORT AND COMMUNICATIONS COMMISSION. Held 2d session at Geneva. Re-elected Jan J. Oyevaer (Netherlands) chairman. 12 of the 15 members and 3 observers were present. *U. N. Press Release* EC/396. Members, advisers: *U. N. Doc. E/CN.2/43*. Revised provisional agenda: *U. N. Doc. E/CN.2/18/Rev. 3*. Report on the meeting: *U. N. B.*, May 1, 1948, pp. 368-369. Text of report to Economic and Social Council: *U. N. Doc. E/CN.2/45/Rev. 1*; *U. N. Doc. E/789*; *E. S. C. O. E.*, 3d yr., 7th sess., Supp. No. 3.
- 15 U. N.—I. M. F. Signed at Lake Success Protocol concerning entry into force of the agreement concerning relationship between them. *U. N. Press Release* IB/53.
- 15 U. N. CONVENTIONAL ARMAMENTS COMMISSION. List of representatives and advisers to the Commission: *U. N. Doc. S/C.3/INF/1*.
- 15-19 ECONOMIC COMMISSION FOR THE MIDDLE EAST. *Ad hoc* Committee for the proposed Commission held first meeting at Lake Success Apr. 15. *U. N. Doc. E/AC.26/SR.1*. The Committee decided to invite Afghanistan, Saudi Arabia, Syria, Yemen and Trans-Jordan to submit views before May 1 on the creation of the Commission. *N. Y. T.*, Apr. 20, 1948, p. 5; *U. N. Press Release* EC/406. Ethiopian Ambassador at Washington sent memorandum the 19th to U. N. Secretary-General requesting that Ethiopia participate as a member of any economic commission of the Middle East that may be established and expressing the view that the terms of reference of such a regional commission should not include territories which are to be re-integrated into territory of one of the states members of the future commission. Text: *U. N. Doc. E/AC.26/5*.
- 16-30 U. N. GENERAL ASSEMBLY. Special session on the Palestine problem opened the 16th at Lake Success. Elected José Arce (Argentina) as chairman. *N. Y. T.*, Apr. 17, 1948, pp. 1, 4; *London Times*, Apr. 17, 1948, p. 3; *U. N. B.*, May 1, 1948, p. 351. U. S. delegates: *D. S. B.*, May 9, 1948, p. 594. Decided Apr. 19 to admit Burma. *N. Y. T.*, Apr. 20, 1948, p. 13; *London Times*, Apr. 20, 1948, p. 3; *U. N. B.*, May 1, 1948, p. 357. Agenda as approved: *U. N. Doc. A/539*. Text of draft trusteeship agreement for Palestine circulated as a working paper by the United States on the 20th: *U. N. Doc. A/C.1/277*; *U. S. Mission Press Release* No. 436. Arab Higher Committee served notice that an independent Arab state in Palestine would be set up unless the U. N. guaranteed a temporary trusteeship in accordance with Arab demands. *N. Y. T.*, Apr. 27, 1948, p. 1. Extracts: p. 3. Resolved to ask the Trusteeship Council to draft emergency steps to protect Jerusalem. p. 3. Text of resolution: *U. N. Doc. T/158*; *D. S. B.*, May 9, 1948, p. 591. Report of the Security Council's Truce Commission was read to the Assembly's Political and Security Committee the 30th. Text: *N. Y. T.*, May 1, 1948, p. 2; *U. N. Doc. S/732*.
- 19 W. H. O. Interim Commission transmitted a report on its activities to the U. N. Economic and Social Council. Text: *U. N. Doc. E/786*.
- 19-30 F. A. O. Latin American Forestry and Forest Products Conference was held at Terresopolis, near Rio de Janeiro (one of a series sponsored by F. A. O.). *U. N. B.*, May 15, 1948, p. 420. Major recommendations: p. 421.

- 19-May 6 U. N. ECONOMIC AND EMPLOYMENT COMMISSION. Third session was held at Lake Success. *U. N. B.*, May 1, 1948, p. 888. Agenda: *U. N. Doc. E/ON.1/48/Rev. 1*. At closing session officers were elected to serve for a year. Personnel: *N. Y. T.*, May 7, 1948, p. 7. Report on session: *U. N. Doc. E/790*; *E. S. C. O. R.*, 3d yr. 7th sess., Supp. No. 1.
- 21-May 5 U. N. TRUSTEESHIP COUNCIL. Held 3d part of 2d session at Lake Success. Provisional agenda: *U. N. Doc. T/155*. Adopted resolution concerning its responsibilities with regard to the proposed Statute for the City of Jerusalem, together with draft Statute as elaborated by the Council. This resolution and Statute were forwarded to the General Assembly by the Secretary-General. Texts: *U. N. Doc. A/541*. Text of resolution: *U. N. Doc. T/156*; *D. S. B.*, May 2, 1948, pp. 572, 578. Representatives of Jewish Agency and Arab Higher Committee agreed Apr. 28 to recommend to their peoples in Palestine that a truce should prevail to cover the old walled city of Jerusalem. Text of statement made by Mr. Sayre: *N. Y. T.*, Apr. 29, 1948, p. 1. Text of Arab proposal for truce: p. 14. Approved May 5 its report to the General Assembly on the protection of Jerusalem. *U. N. B.*, May 15, 1948, p. 405. Summary of conclusions and recommendations: p. 404. Text: *U. N. Doc. A/544*.
- 21-May 7 U. N. SECURITY COUNCIL (India-Pakistan Question). Voted April 21 to enlarge mediation commission, set up Jan. 20, to 5 members and outlined proposals for a plebiscite. Text: *U. N. Doc. S/726*; *U. N. B.*, May 1, 1948, pp. 361-362. Belgium and Colombia were nominated to the commission Apr. 23. *N. Y. T.*, Apr. 24, 1948, p. 4. Other members are Argentina, Czechoslovakia and United States. *U. N. Press Release SC/613*.
- 22-24 I. C. J. Opened hearings the 22d on a request for an advisory opinion on the conditions governing admission to U. N. membership. *N. Y. T.*, Apr. 23, 1948, p. 7. Competence of the Court was challenged by Milan Bartos (Yugoslavia). *N. Y. T.*, Apr. 24, 1948, p. 5. Hearings ended the 24th with presentation of statements on behalf of Poland and Czechoslovakia also attacking the Court's competence. *N. Y. T.*, Apr. 25, 1948, p. 27.
- 24 W. H. O.—UNITED STATES. U. S. note stated that the United States would refrain for the time being, from naming observers to World Health Assembly meeting at Geneva, June 24, 1948. Text: *D. S. B.*, May 2, 1948, p. 581.
- 25 U. N. TRUSTEESHIP COUNCIL. Permanent Soviet representative to the United Nations in a note to the Secretary-General announced that Semyon C. Tsarapkin had been named Russian member of the Council. *U. N. B.*, May 15, 1948, p. 405; *N. Y. T.*, Apr. 26, 1948, p. 1. Text: *U. N. Doc. T/61/Add. 1*.
- 26-May 6 U. N. STATISTICAL COMMISSION. Held 3d session at Lake Success. Report: *U. N. Docs. E/CN.3/50*; *E/795*; *E. S. C. O. R.* 3d yr., 7th sess., Supp. No. 5.
- 26-May 8 ECONOMIC COMMISSION FOR EUROPE. Third session was held at Geneva with representatives of 27 nations attending. Elected Anders Frihagen (Norway) as chairman. *N. Y. T.*, Apr. 27, 1948, p. 7; *U. N. B.*, May 15, 1948, p. 393. Provisional agenda: *U. N. Doc. E/ECE/66*. On Apr. 30 the Russian delegate proposed that German economic agencies should speak for German interests before the Commission. *N. Y. T.*, May 1, 1948, p. 4. Adopted annual report to Economic and Social Council. Text: *U. N. Doc. E/791*. Session closed May 8. *N. Y. T.*, May 9, 1948, p. 13.

MULTIPARTITE CONVENTIONS

AMERICAN STATES, ORGANIZATION OF. Charter. Bogotá, Apr. 30, 1948.

Signatures and Text: *N. Y. T.*, May 1, 1948, p. 16; *D. S. B.*, May 23, 1948, pp. 666-673.

CARIBBEAN COMMISSION. Washington, Oct. 30, 1946.

Approval:

United States. Mar. 5, 1948. *D. S. B.*, Mar. 14, 1948, pp. 360-361.

EUROPEAN ECONOMIC COOPERATION. Paris, Apr. 16, 1948.

Signatures (16) and Text: Dept. of State *Economic Cooperation Series 7*; G. B. M. S. No. 4 (1948), *Cmd.* 7388.

HEALTH ORGANIZATION. Constitution. New York, July 22, 1946.

Ratifications:

Afghanistan. *U. N. B.*, May 1, 1948, p. 388.

Anstralia. *U. N. B.*, Feb. 15, 1948, p. 131.

Byelorussia. *U. N. Press Release H/213*.

Czechoslovakia. Mar. 2, 1948. *U. N. B.*, Mar. 15, 1948, p. 252.

Denmark. Apr. 21, 1948. *U. N. B.*, May 1, 1948, p. 388.

Greece. Mar. 19, 1948. *U. N. B.*, Apr. 1, 1948, p. 296.

Mexico. Apr. 7, 1948. *U. N. B.*, Apr. 15, 1948, p. 348.

Soviet Russia. Mar. 25, 1948. *U. N. B.*, Apr. 15, 1948, p. 348.

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DOROTHY R. DART

JUDICIAL DECISIONS

BY WILLIAM W. BISHOP, JR.

Of the Board of Editors

INTERNATIONAL COURT OF JUSTICE

International Court of Justice—Jurisdiction.

THE CORFU CHANNEL CASE (PRELIMINARY OBJECTION).*

International Court of Justice. March 25, 1948.

By an Application, transmitted to and filed in the Registry of the Court on May 22nd, 1947, under Article 40, paragraph 1, of the Statute, and Article 32, paragraph 2, of the Rules of Court, the Government of the United Kingdom of Great Britain and Northern Ireland instituted proceedings before the Court against the Government of the People's Republic of Albania. These proceedings concerned the incident which occurred in the Corfu Channel on October 22nd, 1946, when two British destroyers struck mines, the explosion of which caused damage to these vessels and heavy loss of life.

It is stated in the Application that the subject of the dispute and the succinct statement of the facts and grounds on which the claim of the United Kingdom is based are to be found in a note dated December 9th, 1946, transmitted by the Government of the United Kingdom to the Albanian Government, a copy of which is attached to the Application. It is alleged in the Application that the Court has jurisdiction "under Article 36 (1) of its Statute as being a matter, which is one specially provided for the Charter of the United Nations, on the grounds: (a) that the Security Council of the United Nations, at the conclusion of proceedings in which it dealt with the dispute under Article 36 of the Charter, by a Resolution, decided to recommend both the Government of the United Kingdom and the Albanian Government to refer the present dispute to the International Court of Justice; (b) that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter to participate in the discussion of the dispute and accepted the condition laid down by the Security Council, when conveying the invitation, that Albania accepts in the present case all the obligations which a Member of the United Nations would have to assume in a similar case; (c) that Article 25 of the Charter provides that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

* Text of opinion and of concurring opinion, digest of dissenting opinion.

Finally, it is stated in the Application that the purpose of the claim of the Government of the United Kingdom is to secure a decision of the Court that the Albanian Government is internationally responsible for the loss and injury resulting from the fact that two destroyers of the Royal Navy struck mines in Albanian territorial waters in the Corfu Channel, and to have the reparation or compensation due therefor from the Albanian Government determined by the Court.

By a telegram of January 24th, 1947, the Albanian Government accepted the decision of the Security Council inviting it, in accordance with Article 32 of the Charter, to participate, without a vote, in the proceedings with regard to the dispute, on condition that Albania should accept, in the present case, all the obligations which a Member of the United Nations would have to assume in a similar case.

The Resolution of the Security Council of April 9th, 1947, to which the Application refers, is as follows:

The Security Council having considered statements of representatives of the United Kingdom and Albania concerning a dispute between the United Kingdom and Albania arising out of an incident on 22nd October, 1946, in the Strait of Corfu in which two British ships were damaged by mines with resulting loss of life and injury to their crews recommends that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Notice of the Application of the Government of the United Kingdom was given on May 22nd, 1947, by the Registrar of the Court, to the Albanian Government by telegram and by letter. On the same day, the Application was transmitted by the Registrar to the Secretary-General of the United Nations for communication in accordance with Article 40, paragraph 3, of the Statute.

On June 23rd, 1947, the Registrar received from the Albanian Government, following upon a reminder addressed to the latter, a telegram acknowledging receipt of the letter and telegram of May 22nd, and announcing the despatch of a reply to these communications.

On July 23rd, 1947, the Deputy-Registrar received from the hands of M. Kahreman Ylli, Albanian Minister in Paris, a letter from the Deputy-Minister of Foreign Affairs of Albania, dated at Tirana, July 2nd, 1947, which confirmed the receipt of the Application, and, after referring to the contents of that document, requested the Registrar

“to be good enough to bring the following statement to the knowledge of the Court:

“The Government of the People’s Republic of Albania finds itself obliged to observe:

"1. That the Government of the United Kingdom, in instituting proceedings before the Court, has not complied with the recommendation adopted by the Security Council on 9th April, 1947, whereby that body recommended 'that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court.'

"The Albanian Government considers that, according both to the Court's Statute and to general international law, in the absence of an acceptance by Albania of Article 36 of the Court's Statute or of any other instrument of international law whereby the Albanian Government might have accepted the compulsory jurisdiction of the Court, the Government of the United Kingdom was not entitled to refer this dispute to the Court by unilateral application.

"2. It would appear that the Government of the United Kingdom endeavours to justify this proceeding by invoking Article 25 of the Charter of the United Nations.

"There can, however, be no doubt that Article 25 of the Charter relates solely to decisions of the Security Council taken on the basis of the provisions of Chapter VII of the Charter and does not apply to recommendations made by the Council with reference to the pacific settlement of disputes, since such recommendations are not binding and consequently cannot afford an indirect basis for the compulsory jurisdiction of the Court, a jurisdiction which can only ensue from explicit declarations made by States Parties to the Statute of the Court, in accordance with Article 36, 3, of the Statute.

"3. The Albanian Government considers that, according to the terms of the Security Council's recommendation of 9th April, 1947, the Government of the United Kingdom, before bringing the case before the International Court of Justice, should have reached an understanding with the Albanian Government regarding the conditions under which the two Parties, proceeding in conformity with the Council's recommendation, should submit their dispute to the Court.

"The Albanian Government is therefore justified in its conclusion that the Government of the United Kingdom has not proceeded in conformity with the Council's recommendation, with the Statute of the Court or with the recognized principles of international law.

"In these circumstances, the Albanian Government would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court by unilateral application, without first concluding a special agreement with the Albanian Government.

"4. The Albanian Government, for its part, fully accepts the recommendation of the Security Council.

"Profoundly convinced of the justice of its case, resolved to neglect no opportunity of giving evidence of its devotion to the principles of friendly

collaboration between nations and of the pacific settlement of disputes, it is prepared, notwithstanding this irregularity in the action taken by the Government of the United Kingdom, to appear before the Court.

"Nevertheless, the Albanian Government makes the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court in application of the Council's recommendations and more especially respecting the interpretation which that Government has sought to place on Article 25 of the Charter with reference to the binding character of the Security Council's recommendations. The Albanian Government wishes to emphasize that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future.

"Accordingly, the Government of the People's Republic of Albania has the honour to inform you that it appoints as its Agent, in accordance with Article 35, paragraph 3, of the Rules of Court, M. Kahreman Ylli, Minister Plenipotentiary of Albania in Paris, whose address for service at the seat of the Court is the Legation of the Federal People's Republic of Yugoslavia at The Hague."

A copy of this letter, which had been handed to the Registry by the Agent for the Albanian Government, was transmitted, on July 24th, to the Agent for the Government of the United Kingdom.

On July 31st, 1947, the President of the Court, as the Court was not sitting, made an Order, in which, after ascertaining the views of the Parties with regard to questions of procedure, it was stated:

Whereas on July 23rd, 1947, a note signed by the Deputy-Minister for Foreign Affairs was filed with the Registry on behalf of the Government of the People's Republic of Albania, in response to the Application of the Government of the United Kingdom;

Whereas, in this note, the Albanian Government declares *inter alia* that the Government of the United Kingdom, in bringing the case before the Court by unilateral application, has not proceeded in conformity with the recommendation of the Security Council of April 9th, 1947, or with the Statute of the Court or the recognized principles of international law, and that, accordingly, the Albanian Government would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court without first concluding a special agreement with the Albanian Government, but whereas the Albanian Government, fully accepting for its part the recommendation of the Security Council, is prepared, notwithstanding this irregularity and in evidence of its devotion to the principles of friendly collaboration between nations and of the pacific settlement of disputes, to appear before the Court;

Whereas the note above mentioned gives notice of the appointment as Agent for the Albanian Government of M. Kahreman Ylli, Minister Plenipotentiary of Albania in Paris, and of his address for service at The Hague;

Whereas, having regard to the Resolution of the Security Council of April 9th, 1947, the said note of the Albanian Government may be regarded as constituting the document mentioned in Article 36 of the Rules of Court;

In the Order, the time-limits were fixed as follows: the 1st October, 1947, for the presentation of the Memorial of the United Kingdom, and the 10th December, 1947, for the presentation of the Counter-Memorial of Albania.

The Memorial of the United Kingdom, presented within the time-limit fixed by the Order, contains statements and submissions with regard to the incidents which occurred on October 22nd, 1946, in the Corfu Channel. These statements and submissions develop the points indicated in the Application as constituting the claim of the United Kingdom.

Within the time-limit fixed for the presentation of the Counter-Memorial, the Agent for the Albanian Government, by a document dated December 1st and filed in the Registry on December 9th, submitted a Preliminary Objection to the Application on the ground of inadmissibility, based upon the following statements:

I. The facts:

(1) The Security Council, in a Resolution adopted on April 9th last, recommended that the United Kingdom and Albanian Governments should immediately refer the dispute between them arising out of an incident on October 22nd, 1946, in the Strait of Corfu, to the International Court of Justice, in accordance with the provisions of the Statute of the Court;

(2) contrary to this recommendation, the United Kingdom Government, alone and without any agreement with the Albanian Government, approached the Court on May 13th last. By proceeding thus unilaterally, the Government of the United Kingdom brought an Application before the Court;

(3) on July 2nd last, the Albanian Government made to the Court most explicit reservations respecting the manner in which the Government of the United Kingdom had brought the case before the Court, but, subject to these reservations, stated that it was prepared to appear before the Court;

(4) on the other hand, the Albanian Government, in its letter of July 2nd last addressed to the Court, fully accepted the Security Council's recommendation of April 9th last, as far as it was concerned, and observed that, to bring their case before the Court, the two Governments should have reached an understanding in conformity with the Security Council's recommendation and in accordance with the provisions of the Court's Statute.

II. The Law:

(1) According to Article 36, paragraph 1, of the Court's Statute, its jurisdiction 'comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force'. According to Article 40,

paragraph 1, of the Statute, 'cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application. . . ' .

(2) The Albanian Government not being bound by any treaty or convention in force to submit its dispute with the United Kingdom Government to the Court, it follows that, in accordance with the provisions of the Statute of the Court, only both parties to this dispute can validly do so.

If this is so, the case must be brought before the Court by the notification of the special agreement, and not by an application.

(3) In its Application of May 13th last, the United Kingdom Government invokes no treaty or convention nor does it claim that the parties are submitting their dispute to the Court in accordance with the provisions of the Statute.

The United Kingdom Government maintains that this is a "matter, which is one specially provided for in the Charter of the United Nations, on the grounds: (a) that the Security Council of the United Nations, at the conclusion of proceedings in which it dealt with the dispute under Article 36 of the Charter, by a Resolution, of which a copy forms Annex 2 to this Application, decided to recommend both the Government of the United Kingdom and the Albanian Government to refer the present dispute to the International Court of Justice; (b) that the Albanian Government accepted the invitation of the Security Council under Article 32 of the Charter to participate in the discussion of the dispute and accepted the condition laid down by the Security Council, when conveying the invitation, that Albania accepts in the present case all the obligations which a Member of the United Nations would have to assume in a similar case. (A copy of the invitation of the Security Council and of the Albanian Government's reply thereto form Annex 3 to the present Application); (c) that Article 25 of the Charter provides that the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." (See letter from the Agent of the Government of the United Kingdom of Great Britain and Northern Ireland, dated May 13th, 1947.)

As regards these reasons given by the United Kingdom Government, the Albanian Government has the honour to make the following observations:

Ad (a) The Security Council, in its Resolution of April 9th last, only recommended 'the United Kingdom and Albanian Governments' to refer their dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Such a recommendation certainly cannot *ipso facto* constitute a matter specially provided for in the Charter of the United Nations to which the Court's jurisdiction extends. Nothing in the Charter of the United Nations provides for such a case;

ad (b) In complying with the invitation given by the Secretary-General *ad interim* of the United Nations on January 20th last, the Albanian Government only accepted "in the present case all the obligations which a Member of the United Nations would have to assume in a similar case," within the meaning of Article 32 of the Charter.

As it was a recommendation, the obligations cannot *ipso facto* constitute a matter specially provided for in the Charter of the United Nations with a view to the Court's compulsory jurisdiction.

As a result of rights and obligations assumed by them in the Charter, Members of the United Nations are never bound to appear before the Court without any other procedure, namely, without having duly and expressly accepted the Court's jurisdiction in conformity with the provisions of its Statute;

ad (c) The Security Council's Resolution of April 9th last contains a recommendation which, in conformity with the Charter of the United Nations, has no binding force for the Governments of Albania and the United Kingdom without their consent and acceptance. Moreover, according to the very terms of the Resolution, the two Governments must proceed in conformity with the provisions of the Statute of the Court in order that they may submit their dispute to it.

The said Resolution of the Security Council cannot, in conformity with the Charter of the United Nations and with the provisions of the Statute of the Court, be considered to be a decision of the Security Council, such as would on the one hand oblige both parties, *ipso facto* and without any other step, to appear before the International Court of Justice, and such as would, on the other hand, authorize them to approach the International Court of Justice without regard to the provisions of the Statute of the Court.

To sum up the foregoing observations, the Albanian Government asserts that neither the said Resolution of April 9th last, nor the said declaration of the Albanian Government of 20th January last, nor yet Article 25 of the Charter, can, whether taken separately or conjointly, be relied on as imposing the Court's compulsory jurisdiction on the Albanian Government in the present case.

III. Conclusions:

May it please the Court to proceed in conformity with Article 62 of the Rules of Court,

to place on record that, in accepting the Security Council's recommendation, the Albanian Government is only obliged to submit the above-mentioned dispute to the Court in accordance with the provisions of the Statute of the Court,

and to give judgment that the Application of May 13th last addressed to the Court by the Government of the United Kingdom against the Government of the People's Republic of Albania, is inadmissible, the United Kingdom Government having submitted the said Application contrary to the provisions of Article 40, paragraph 1, and of Article 36, paragraph 1, of the Statute of the Court.

The Albanian Preliminary Objection was transmitted, on December 9th, to the Agent for the United Kingdom and was communicated on December 11th to the Members of the United Nations, pursuant to the provisions of Article 63 of the Statute.

By an Order, made on December 10th, 1947, the President of the Court, as the Court was not sitting, fixed January 20th, 1948, as the time-limit for the presentation by the Government of the United Kingdom of a written

statement of its observations and submissions in regard to the Preliminary Objection.

This statement, dated January 19th, 1948, and received in the Registry on the same date, contains, in addition to a number of arguments, the following statements and submissions:

- “9.
- (a) It [the Government of the United Kingdom] has fully complied with the recommendation of the Security Council immediately to refer the dispute to the Court. It did so in its Application of 13th May, 1947, which fully and clearly indicated the subject of the dispute, and the parties, in accordance with Article 40 (1) of the Statute of the Court and Article 32 (2) of the Rules of Court.
 - (b) The Government of Albania, after delivery of the United Kingdom Application, stated in its letter of 2nd July, 1947, that it fully accepted the recommendation of the Security Council, and that it was prepared to appear before the Court and to accept its jurisdiction in this case.
 - (c) This Albanian letter, coupled with the Resolution of the Security Council of 9th April, 1947, was accepted by the President of the Court as a document which satisfied the conditions laid down by the Security Council for the appearance before the Court of a State not party to the Statute. (See Resolution of the Security Council of 15th October, 1946, under which a State not party to the Statute may make a ‘particular declaration’ accepting the jurisdiction of the Court in respect of a particular dispute only.)
 - (d) In these circumstances the jurisdiction of the Court to make the Order of 31st July, 1947, and to proceed with the trial of this dispute is fully established. Under Article 36 (1) of the Statute, the jurisdiction of the Court comprises all cases which the parties refer to it, and there is no dispute which States entitled to appear before the Court cannot refer to it. . . . The parties have clearly referred the present dispute by the above-mentioned documents (namely, the United Kingdom Application of 13th May, 1947, and the Albanian letter of 2nd July, 1947), which, whether or not they constitute a ‘special agreement’, at least constitute a ‘reference’. A special agreement is not necessary. . . .
 - (e) Article 40 of the Statute merely defines the formal basis for action by the Court in a case where jurisdiction is established by Article 36 (1). There is nothing in the Statute or the Rules of Court which prevents the proceedings being formally instituted by application, even though the jurisdiction of the Court is established by a ‘reference’ by the parties or by a ‘special agreement’. Accordingly the Government of the United Kingdom, in bringing this

matter before the Court by application, has, it is submitted, proceeded correctly. . . .

- (f) Further, there has been, in fact, an agreement between the parties constituted by the acceptance of the jurisdiction on the part of the Government of the United Kingdom in compliance with the Resolution of the Security Council of 9th April, 1947 (as evidenced by its Application of 13th May, 1947), followed by an acceptance of the jurisdiction on the part of the Government of Albania in its letter of 2nd July, 1947, to refer (without prejudice to the Albanian Government's view as to the interpretation of Article 25 of the Charter) to the Court the issues defined in the Application. This agreement possesses all the essentials of a 'special agreement' and conforms fully with Article 40 of the Statute. . . .
- (g) Even if (which is not admitted) there was any formal irregularity in the mode of the commencement of the present proceedings, this irregularity has been cured, because the Albanian Government by its letter of 2nd July, 1947, has waived any possible objection and has consented to the jurisdiction of the Court. An irregularity in the manner in which a case is introduced may be cured by subsequent events. . . .
- (h) Having once consented to the jurisdiction, the Albanian Government cannot afterwards withdraw its consent. . . .
- (i) The President's Order of 31st July, 1947, clearly proceeded upon the basis that the Albanian Government had definitely accepted the jurisdiction, as was, in fact, the case. It is not competent for the Albanian Government to reopen the question of jurisdiction.

.....

"12. In view of the circumstances above referred to, which constitute, in the submission of the Government of the United Kingdom, a clear acceptance by Albania of the jurisdiction of the Court, the Government of the United Kingdom has not, in these Observations, set forth arguments on the applicability of Article 25 of the Charter. However, the Government of the United Kingdom must reserve the right, if necessary, to invoke the jurisdiction of the Court on the grounds set forth in its original Application."

In conclusion, the Government of the United Kingdom "submits to the Court:—

- (a) that the preliminary objection submitted by the Government of Albania should be dismissed,
- (b) that the Government of Albania should be directed to comply with the terms of the President's Order of 31st July, 1947, and to deliver a Counter-Memorial on the merits of the dispute without further delay."

As the Court did not have upon the Bench a judge of Albanian nationality, the Albanian Government availed itself of the right provided by Article 31 of paragraph 2, of the Statute, and designated Dr. Igor Daxner, President of a Chamber of the Supreme Court of Czechoslovakia, as judge *ad hoc*.

In the course of public sittings, held on February 26th, 27th and 28th, and on March 1st, 2nd and 5th, 1948, the Court heard oral arguments on behalf of the respective parties: M. Kahreman Ylli, Agent, and Professor Vochoč, Counsel, for Albania; and Mr. W. E. Beckett, Agent, and Sir Hartley Shawcross, Counsel, for the United Kingdom. On being questioned by the President before the close of the hearing, the Agent for the Albanian Government declared that the submissions presented in the Albanian Preliminary Objection of December 9th, 1947, were final submissions; a similar declaration was made on behalf of the Agent for the Government of the United Kingdom with regard to the submissions in the Observations of the United Kingdom of January 19th, 1948.

Documents in support were filed as annexes to the Application and Memorial of the United Kingdom Government, to the Preliminary Objection of the Albanian Government and to the Observations of the United Kingdom Government in regard to this Preliminary Objection, as well as in view of the oral proceedings.

The above being the state of the proceedings, the Court must now adjudicate upon the Preliminary Objection raised on behalf of the Government of the People's Republic of Albania.

* * *

In the written submissions, which it confirmed orally at the hearing on March 5th, 1948, the Albanian Government requests the Court

“the place on record that the Albanian Government, in accepting the Security Council's recommendation, is only obliged to submit the above-mentioned dispute to the Court in accordance with the provisions of the Statute of the Court,”

and

“to give judgment that the Application of May 13th last, addressed to the Court by the Government of the United Kingdom against the Government of the People's Republic of Albania, is inadmissible, the Government of the United Kingdom having submitted the said Application contrary to the provisions of Article 40, paragraph 1, and Article 36, paragraph 1, of the Statute of the Court.”

The first submission relates to the Resolution of April 9th, 1947, in which the Security Council recommended “that the United Kingdom and Albanian Governments should immediately refer this dispute to the International Court of Justice in accordance with the provisions of the Statute

of the Court." The Albanian Government accepted this recommendation and on the basis of its acceptance recognizes its obligation to refer the dispute to the Court in accordance with the provisions of the Statute. It is true that this obligation could only be fulfilled in accordance with the provisions of the Statute. In recognizing this fact in accordance with the request of the Albanian Government, the Court points out that that Government subsequently contracted other engagements, the date and exact scope of which will be established later.

The second submission of the Albanian Government, which is disputed by the Government of the United Kingdom, appears to constitute an objection on the ground of the inadmissibility of the Application. The intention of the Albanian Government, however, seems to be somewhat lacking in precision in this respect. When it refers, in its submissions, to Article 40, paragraph 1, of the Statute of the Court, the Albanian Government appears merely to have in mind a procedural irregularity resulting from the fact that the main proceedings were instituted by means of an application instead of by a special agreement concluded beforehand. The Albanian Government, however, also refers to Article 36, paragraph 1, of the Statute, a provision which relates exclusively to the jurisdiction of the Court; and the criticisms which are directed against the Application of the United Kingdom in the text of the Preliminary Objection, relate to an alleged lack of compulsory jurisdiction as well as to the formal admissibility of the Application.

This argument may be explained by the connexion which the United Kingdom Government, for its part, had made between the institution of proceedings by application and the existence, alleged by it in this case, of compulsory jurisdiction.

In support of its Application, the Government of the United Kingdom invoked certain provisions of the Charter of the United Nations and of the Statute of the Court to establish the existence of a case of compulsory jurisdiction. The Court does not consider that it needs to express an opinion on this point, since, as will be pointed out, the letter of July 2nd, 1947, addressed by the Albanian Government to the Court, constitutes a voluntary acceptance of its jurisdiction.

The letter of July 2nd, 1947, in spite of the reservation stated therein, the exact scope of which will be considered later, removes all difficulties concerning the question of the admissibility of the Application and the question of the jurisdiction of the Court.

With respect to the first point, the Albanian Government, while declaring on the one hand that it "would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the International Court by unilateral application, without first concluding a special agreement with the Albanian Government," states, on

the other hand, that "it is prepared, notwithstanding this irregularity in the action taken by the Government of the United Kingdom, to appear before the Court." This language used by the Albanian Government cannot be understood otherwise than as a waiver of the right subsequently to raise an objection directed against the admissibility of the Application founded on the alleged procedural irregularity of that instrument.

The letter of July 2nd, 1947, is no less decisive as regards the question of the Court's jurisdiction. Not only does the Albanian Government, which had already assumed certain obligations towards the Security Council by its telegram of January 24th, 1947, declare in that letter that it "fully accepts the recommendation of the Security Council" to the effect that the dispute should be referred to the Court in accordance with the provisions of the Court's Statute, but, after stating that it is "profoundly convinced of the justice of its case," it accepts in precise terms "the jurisdiction of the Court for this case." The letter of July 2nd, therefore, in the opinion of the Court, constitutes a voluntary and indisputable acceptance of the Court's jurisdiction.

While the consent of the parties confers jurisdiction on the Court, neither the Statute nor the Rules require that this consent should be expressed in any particular form.

The Albanian contention that the Application cannot be entertained because it has been filed contrary to the provisions of Article 40, paragraph 1, and of Article 36, paragraph 1, of the Court's Statute, is essentially founded on the assumption that the institution of proceedings by application is only possible where compulsory jurisdiction exists and that, where it does not, proceedings can only be instituted by special agreement.

This is a mere assertion which is not justified by either of the texts cited. Article 32, paragraph 2, of the Rules does not require the Applicant, as an absolute necessity, but only "as far as possible," to specify in the application the provision on which he founds the jurisdiction of the Court. It clearly implies, both by its actual terms and by the reasons underlying it, that the institution of proceedings by application is not exclusively reserved for the domain of compulsory jurisdiction.

In submitting the case by means of an Application, the Government of the United Kingdom gave the Albanian Government the opportunity of accepting the jurisdiction of the Court. This acceptance was given in the Albanian Government's letter of July 2nd, 1947.

Besides, separate action of this kind was in keeping with the respective positions of the parties in proceedings where there is in fact a claimant, the United Kingdom, and a defendant, Albania.

Furthermore, there is nothing to prevent the acceptance of jurisdiction, as in the present case, from being effected by two separate and successive acts, instead of jointly and beforehand by a special agreement. As the

Permanent Court of International Justice has said in its Judgment No. 12, of April 26th, 1928, page 23: "The acceptance by a State of the Court's jurisdiction in a particular case is not, under the Statute, subordinated to the observance of certain forms, such as, for instance, the previous conclusion of a special agreement."

The Security Council's recommendation has been relied upon to support opposite conclusions. But, in the first place, though this recommendation clearly indicates that the bringing of the case before the Court requires action on the part of the parties, it does not specify that this action must be taken jointly, and, in the second place, the method of submitting the case to the Court is regulated by the texts governing the working of the Court as was pointed out by the Security Council in its recommendation.

The Court cannot therefore hold to be irregular a proceeding which is not precluded by any provision in these texts.

The scope of the reservation formulated in the letter of July 2nd, 1947, has still to be considered. The reservation is as follows: "Nevertheless, the Albanian Government makes the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court in application of the Security Council's recommendation and more especially respecting the interpretation which that Government has sought to place on Article 25 of the Charter with reference to the binding character of the Security Council's recommendations. The Albanian Government wishes to emphasize that its acceptance of the Court's jurisdiction for this case cannot constitute a precedent for the future."

This reservation is the only limit set by the Albanian Government either to its acceptance of the Court's jurisdiction, or to its abandonment of any objection to the admissibility of the proceedings. It is for the Court to decide, with binding force as between the parties, what is the interpretation of the letter of July 2nd, 1947. It is clear that the reservation contained in the letter is intended only to maintain a principle and to prevent the establishment of a precedent as regards the future. The Albanian Government makes its reservations—both as to the manner in which the United Kingdom Government has instituted the proceedings, and as to the interpretation which that Government claimed to give to Article 25 of the Charter with a view to establishing the Court's compulsory jurisdiction—not for the purposes of the present proceedings, but in order to retain complete freedom of decision in the future. It is clear that no question of a precedent could arise unless the letter signified in the present case the acceptance of the Court's jurisdiction on the merits.

The reservation in the letter of July 2nd, 1947, therefore does not enable Albania to raise a preliminary objection based on an irregularity of procedure, or to dispute thereafter the Court's jurisdiction on the merits.

FOR THESE REASONS,

while placing on record the declaration contained in the first submission of the Albanian Government, but subject to the explicit reservation of the obligations assumed by that Government in its letter of July 2nd, 1947,

THE COURT,

by fifteen votes against one,

(1) rejects the Preliminary Objection submitted by the Albanian Government on December 9th, 1947;

(2) decides that proceedings on the merits shall continue and fixes the time-limits for the filing of subsequent pleadings as follows:

(a) for the Counter-Memorial of the Albanian Government, Tuesday, June 15th, 1948;

(b) for the Reply of the United Kingdom Government, Monday, August 2nd, 1948;

(c) for the Rejoinder of the Albanian Government, Monday, September 20th, 1948.

The present judgment has been drafted in French and English, the French text being authoritative.

Done at the Peace Palace, The Hague, this twenty-fifth day of March, one thousand nine hundred and forty-eight, in three copies, one of which shall be placed in the archives of the Court and the others delivered to the Governments of the People's Republic of Albania and of the United Kingdom of Great Britain and Northern Ireland respectively.

(Signed) J. G. GUERRERO,
President.

(Signed) EDVARD HAMBRO,
Registrar.

Judges BASDEVANT, ALVAREZ, WINIARSKI, ZORIČIĆ, DE VISSCHER, BADAWI PASHA, KRYLOV, whilst concurring in the judgment of the Court, have availed themselves of the right conferred on them by Article 57 of the Statute and appended to the judgment a statement of their separate opinion.

M. DAXNER, Judge *ad hoc*, declaring that he is unable to concur in the judgment of the Court, has availed himself of the right conferred on him by Article 57 of the Statute and appended to the judgment a statement of his separate opinion.

(Initialled) J. G. G.

(Initialled) E. H.

SEPARATE OPINION BY JUDGES BASDEVANT, ALVAREZ,
WINIARSKI, ZORIČIĆ, DE VISSCHER, BADAWI PASHA
AND KRYLOV

[*Translation.*]

Whilst concurring in the judgment of the Court, we feel obliged to state that we should have wished the Court to have passed upon the merits of the claim of the Government of the United Kingdom to treat the present case as one falling within the compulsory jurisdiction of the Court. Since the Application was based upon this claim and since the claim, if well-founded, would, in itself, have justified recourse to this method of instituting proceedings without there having been any need to consider the effect of the letter of July 2nd, 1947, it appears to us that, logically, the question of compulsory jurisdiction falls to be dealt with first of all.

This question has been discussed at length both in the pleadings and during the oral proceedings. It arose because we were faced here with a procedure which, regarded as a whole, is the outcome of an innovation in the Charter of the United Nations. Under the régime of the Charter, the rule holds good that the jurisdiction of the International Court of Justice, as of the Permanent Court of International Justice before it, depends on the consent of the States parties to a dispute. But Article 36 of the Charter has made it possible for the Security Council to recommend the parties to refer their dispute to the International Court of Justice in accordance with the provisions of the Court's Statute. The Security Council, for the first time, availed itself of this power on April 9th, 1947. The contentious procedure, recourse to which the Security Council thus recommended, involves, in order that the Court may be seized of the case, certain action by the parties or, possibly, by one of them. Faced with this new solution, the Governments concerned had different views as to the effect of the recommendation and, consequently, as to the method to be adopted in bringing the case before the Court.

The Government of the United Kingdom held, on various grounds deduced by it from the provisions of the Charter and Statute, that this was a new case where the compulsory jurisdiction of the Court existed. Accordingly, it instituted proceedings by Application and cited in its Application the provisions of the Charter and Statute on which it founded the Court's jurisdiction.

The arguments presented on behalf of the United Kingdom to establish that this was a new case of compulsory jurisdiction—which arguments the Agent and Counsel for the Albanian Government sought to refute—have not convinced us. In particular, having regard (1) to the normal meaning of the word recommendation, a meaning which this word has retained in diplomatic language, as is borne out by the practice of the Pan-American Conferences, of the League of Nations, of the International Labour Organization, etc., (2) to the general structure of the Charter and of the

Statute which founds the jurisdiction of the Court on the consent of States, and (3) to the terms used in Article 36, paragraph 3, of the Charter and to its object which is to remind the Security Council that legal disputes should normally be decided by judicial methods, it appears impossible to us to accept an interpretation according to which this article, without explicitly saying so, has introduced more or less surreptitiously, a new case of compulsory jurisdiction.

On this point, the view maintained on behalf of the Albanian Government appears to us well-founded, but when that Government claims to argue therefrom that in this case the institution of proceedings by application was irregular, then we are unable, for the reasons given in the judgment, to accept this argument.

Extracts from dissenting opinion of Dr. Igor Dazner, Judge ad hoc:

"I am unable to concur in the present judgment on the Preliminary Objection submitted by the Government of the People's Republic of Albania in the Corfu Channel case. . . .

"It was contended by the Government of the United Kingdom that the recommendation made by the Security Council under Chapter VI of the Charter, and more particularly under Article 36, paragraph 3, is *ipso facto* obligatory for the parties to whom it is addressed. The compulsory jurisdiction of the Court would thus be established in virtue of the recommendation of 9th April for the United Kingdom and Albania in the present case. Special stress was laid in this connexion by the representative of the United Kingdom on Article 25 of the Charter, the recommendation under Article 36 (3) of the Charter being construed in virtue of Article 24 (2) of the Charter as decisions of the Security Council of obligatory character.

"In my opinion such a construction of Article 25 of the Charter, and in general, the obligatory character of a recommendation under Article 36 (3) of the Charter, is inadmissible.

"The term 'recommendation' as used by the Charter is by no means a new one. It appeared especially in the Covenant of the League of Nations. The voluntary and not obligatory character of a recommendation made by the Council of the League, even unanimously, was expressly defined in Advisory Opinion No. 12 of the Permanent Court (pp. 27-28). . . .

"The *travaux préparatoires* of the San Francisco Conference establish also that Article 25 of the Charter must not be applied indifferently as meaning *ipso facto* 'obligatory decisions.' . . .

"The character of recommendations made by the Security Council under Chapter VI of the Charter being purely voluntary, it is evident also that the recommendation, addressed under Article 36 (3) of the Charter by the Security Council to the Governments of the United Kingdom and Albania on 9th April, 1947, could not involve any obligation for both Governments

to go before the Court and that no question whatsoever of the compulsory jurisdiction of the Court can be raised in the present case in virtue of Article 36 (3) or any other article of the Charter.

.....

"According to Article 40 (1) of the Statute, 'cases are brought before the Court, *as the case may be*, either by the notification of the special agreement, or by written application.' There was no question whatsoever of a special agreement between the Governments of Albania and of the United Kingdom, not even if the term special agreement should be construed as a concluding fact or in some other non-formal way. . . . Was then the United Kingdom Government justified in bringing the case before the Court by means of a 'written application'? Article 40 of the Statute does not itself say expressly which is the case for application. But it should not be difficult to understand that this is the procedure when there is compulsory jurisdiction. . . . The notification of the special agreement covering, according to Article 40 of the Statute, the cases of optional jurisdiction, the application, *requête*, appears necessarily to be the formal instrument to bring before the Court the matters of compulsory jurisdiction.

.....

"Since cases of compulsory jurisdiction are brought before the Court, according to Article 40 of the Statute by means of an application, the point is made that the British application of 13th May, 1947, was *prima facie* irregular.

"III. The only way which was open to the Government of the United Kingdom was to submit the dispute to the Court in agreement with Albania, unless the Albanian Government gave its consent to the application *a posteriori*. . . .

.....

"As proceedings could not be instituted before the Court by unilateral application, the acceptance of the recommendation by the Albanian Government in the letter of July 2nd could not, and did not, by itself in any way affect the position regarding the admissibility of the British Application of May 13th.

"It should also be evident that the acceptance of the recommendation by the Albanian Government on July 2nd did not by itself implement the recommendation. The Governments of Albania and the United Kingdom having both accepted the recommendation of April 9th, are from now on bound to submit the dispute to the Court 'according to the provisions of the Statute.' A *pactum de contrahendo* is established between them from now on to bring the dispute before the Court by appropriate means; but the dispute is not yet brought before the Court by these reciprocal promises. . . .

.....

"The letter of July 2nd appears, in the light of these considerations, as a recognition of the jurisdiction of the Court for the purpose of enabling Albania to appear before it (*se présenter devant la Cour*).

"As the Albanian Government at the same time have made 'the most explicit reservations respecting the manner in which the Government of the United Kingdom has brought the case before the Court,' it is evident that by these reservations this Government have retained the right to oppose the 'admissibility' of the written application within the time fixed by Article 62 of the Rules of Court.

"The Albanian Government had pointed out that it 'would be within its rights in holding that the Government of the United Kingdom was not entitled to bring the case before the Court by unilateral application.' This sentence is to be found at the end of the third paragraph of the above-mentioned letter. The first three paragraphs briefly indicate the meaning of the Resolution of the Security Council of April 9th and the means by which the dispute should have been brought before the Court in conformity with this Resolution. In the opinion of the Albanian Government a special agreement was clearly necessary for this purpose.

.....

"Let us examine why Albania, in spite of its right to ignore the application, agreed to appear before the Court. As a small country of scarcely a million inhabitants, Albania could not, by its refusal, adopt a position which might have been easily adopted by a great Power, such as England for instance, in a similar case. Moreover, in the eyes of the world, Albania has hitherto been considered (wrongly of course) as one of the countries of the Balkans, so often described as the 'powder-keg' of Europe. Its refusal to appear before the Court would have contributed to confirm this unfounded reputation as a backward country which refused to recognize the institutions of the civilized world by an act which might have been interpreted as involving contempt of Court. In such circumstances, therefore, Albania chose not to invoke its right, as a great Power might easily have done without incurring the criticism of the world, and agreed to appear before the Court.

"Therefore it decided to appear before the Court in spite of this irregularity; but it reserved to itself the right to present the preliminary objection against the irregularity of the United Kingdom's Application. The Albanian Government has exercised this right so reserved within the time fixed by Article 62 of the Rules.

"In order to avail itself of its reservations, i.e., in order to be able to present the preliminary objection to the Court, Albania had first to appear before the Court, that is to say it had to accept the jurisdiction of the Court. As pointed out above, it is evident that a State not a party to the Statute cannot appear before the Court without having previously made such a declaration. In the present case, taking into consideration the

whole contents of the letter of July 2nd and especially the explicit reservations of the Albanian Government, the recognition of the jurisdiction of the Court is for the purpose of enabling it 'to appear before the Court.'

.....

"As the Albanian Government would have had the right to ignore the United Kingdom Application, but decided to appear before the Court, in spite of the irregularity of this Application, and to attack this irregularity before the Court, it considered it necessary to point out that its recognition of the jurisdiction of the Court 'cannot constitute a precedent for the future.' This in effect means that the Albanian Government reserved the right not to reply, to ignore completely any identical or similar written applications, which in future might be directed against her.

.....

"The conclusion is: if the reservation expressed in the letter of July 2nd is to have any meaning, it must not be considered in the light of another phrase referring to a new case in the future, but rather in its proper place and context and with due regard to its purpose in the present case.

.....

"It is agreed that the United Kingdom Application of May 13th could be made valid by means of consent to it given by the Albanian Government, even *a posteriori*. The judgment expresses the opinion that the letter of July 2nd declared such an intention of the Albanian Government. . . .

"It is evident that such a conclusion is made possible only by a complete disregard of the reservation expressed in the letter of July 2nd. As soon as the reservation is recognized as operative in the present case, the Application cannot be considered as validated. The reservation is made in order to limit the acceptance of the jurisdiction of the Court by the Albanian Government and it excludes a *forum prorogatum* on the basis of an irregular application, which was not subsequently made valid.

"To the foregoing observations, I wish to add only the following: In view of my reading of the letter of July 2nd, I was not obliged to make use of the rules of interpretation *in dubio stricto sensu*, etc., the rules which should undoubtedly be applied, if necessary, in the present case. On the other hand, it would be well for the majority of the Court to read and interpret the letter of July 2nd *stricto sensu*. But it is sufficiently manifest that these rules of interpretation were not applied.

"Conclusion:

"As, according to my opinion, the British written Application was irregular *ab initio*, and as the Albanian Government has not either *expressis verbis* or tacitly done anything to make the application valid, I consider that the Court *for the time being* is not competent to judge the merits and that the preliminary objection should have been upheld."

UNITED STATES SUPREME COURT

Foreign relations of United States—Executive control.

CHICAGO & SOUTHERN AIR LINES v. WATERMAN S. S. CORP. 68 Sup. Ct. 431.*

United States Supreme Court, Feb. 9, 1948. Jackson, J.

Waterman S. S. Corp. was denied by the Civil Aeronautics Board, with the express approval of the President, a certificate of convenience and necessity for an air route between the Continental United States and its Caribbean possessions and foreign countries, while such a certificate was granted Chicago & Southern Air Lines, a rival applicant. Waterman S. S. Corp. thereupon filed a petition for review with the Circuit Court of Appeals for the Fifth Circuit, relying on §1006 of the Civil Aeronautics Act. Although the Court of Appeals disclaimed power to question or review the President's approval or disapproval, it refused to dismiss the petition, on the ground that any C.A.B. order was incomplete until court review. Certiorari was granted upon the request of the other air line and the C.A.B.

Speaking for the Court, Mr. Justice Jackson held that the decision should be reversed and the petition of Waterman S. S. Corp. for judicial review should be dismissed. The statute provided for judicial review "except any order in respect of any foreign air carrier subject to the approval of the President." It also provided that any decision to grant or deny requests by a foreign air carrier for a permit, or by an American air carrier for a certificate to engage in overseas or foreign air transportation, should be submitted to the President. He stated: "It [the Act] grants no express exemption [from judicial review] to an order such as the one before us, which concerns a citizen carrier but which must have Presidential approval because it involves overseas and foreign air transportation. The question is whether an exemption is to be implied."

In finding this a field in which the President's power over foreign affairs was untrammelled by judicial review, he stated: "Congress may, of course, delegate very large grants of its power over a foreign commerce to the President. . . . The President also possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs. For present purposes, the order draws vitality from either or both sources. Legislative and Executive powers are pooled obviously to the end that commercial strategic and diplomatic interests of the country may be coördinated and advanced without collision or deadlock between agencies. . . .

* Although this decision relates to United States Constitutional law and not to international law, it is believed to be of interest to readers of this JOURNAL.

" . . . The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held in secret. . . . But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry. . . . We therefore agree that whatever of this order emanates from the President is not susceptible of review by the Judicial Department."

Discussing the orders of the Civil Aeronautics Board in particular, he said, "We conclude that orders of the Board as to certificates for overseas or foreign air transportation are not mature and are therefore not susceptible to judicial review at any time before they are finalized by Presidential approval. After such approval has been given, the final orders embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate."

Justices Douglas, Black, Reed, and Rutledge dissented, on the ground that Congress has specifically provided for judicial review in this group of cases, and "That review can be had without intruding on the exclusive domain of the Chief Executive."

Treaties—domestic effect on public policy.

In *Shelley v. Kraemer*; *McGhee v. Sipes*, 68 Sup. Ct. 836 (May 3, 1948), and *Hurd v. Hodge*; *Urciolo v. Same*, *ibid.* 847 (May 3, 1948), the United States Supreme Court reversed decisions of the Supreme Court of Missouri, the Supreme Court of Michigan, and the Court of Appeals for the District of Columbia, and held that restrictive covenants against the occupancy of land "by people of the Negro or Mongolian Race," or "by persons except of the Caucasian race," or its transfer to "any Negro or colored person," were not to be enforced by the courts. Although the Michigan court had discussed the effect of the United Nations Charter, and a brief had been filed by the American Association for the United Nations (cf. comment in this JOURNAL, Vol. 42, p. 105); the Court's opinions were solely in terms of constitutional law. The only mention of the treaty point was by Vinson, C.J., in *Hurd v. Hodge*, as follows: "The power of

the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents. Where the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power" (p. 853).

UNITED STATES CIRCUIT COURTS OF APPEALS

War—effect on Statute of Limitations—citizen held prisoner by enemy.

OSBOURNE *v.* UNITED STATES. 164 F. (2d) 767.

Circuit Court of Appeals, Second Circuit, Dec. 5, 1947. Frank, C. J.

Plaintiff sued to recover for injuries sustained while serving as a seaman on a vessel operated by the United States between Oct. 15, 1941 and Dec. 8, 1941, upon which latter date he was interned along with the rest of the crew by the Japanese authorities and held a prisoner until 1945, when he returned to the United States. Suit was commenced July 31, 1946, after the expiration of the period of limitations provided in the statutes under which the suit was brought. The District Court for the Southern District of New York dismissed the action, 74 F. Supp. 711. On appeal, reversed, on the ground that the statute of limitations did not run against plaintiff while he was in captivity.

The Court referred to the leading case of *Hanger v. Abbott*, 73 U. S. 532 (1867), holding that the statute of limitations did not run during the war, while the courts were not open to the plaintiff. Judge Frank said, in part:

"The Hanger case has been consistently followed in the federal courts. Its doctrine has been applied not only where the plaintiff was a citizen of the United States, but also where he was an enemy alien during a war. It has also been applied where the statute of limitations was of the substantive type involved here, not the ordinary type as in the Hanger case, because the considerations for so tolling the ordinary statute apply also to the special type. State courts, facing the same problem involving limitations provisions in wrongful death statutes, have held that the statute should toll for enemy aliens, despite silence on the subject in the statute itself.

"We see no reason why the Hanger doctrine should not govern here. The cases cited show there would be no doubt that a Japanese citizen employed as appellant on the S.S. President Harrison would have been able to sue for similar injuries. It would seem the height of unreasonableness to grant such redress to one of our former enemies at the same time we denied it to a citizen who, through no fault of his own, was held prisoner by that enemy."

War—duration—meaning of “cessation of hostilities” in lease.

SAMUELS v. UNITED SEAMEN'S SERVICE, INC. 165 F. (2d) 409.

Circuit Court of Appeals, Ninth Circuit, Jan. 9, 1948. Bone, C. J.

This case involved the construction of a lease made Sept. 15, 1943, which by its terms was to extend “six (6) months from and after the cessation of hostilities in the present war with Japan.” The parties stipulated that Aug. 14, 1945 was “V-J Day” when orders were given to cease fire, and “that on September 1, 1945 on board the U. S. S. Missouri the formal document of surrender was executed between the then empire of Japan and the United States of America.” The District Court for the Northern District of California held that the period ran from the Presidential Proclamation of Dec. 12, 1946, effective Dec. 31, 1946, declaring that “cessation of hostilities.”

Looking to the purpose of the lease, to provide facilities for merchant seamen, the Court concluded that “under the particular circumstances of this case the ordinary meaning to attach to the phrase ‘cessation of hostilities in the present war with Japan,’ is the termination of open and hostile warfare activity which was effected on V-J Day, August 14, 1945.” The court pointed to the difference from the situation where the termination of statutes was involved, or where the question was whether a state of war continued.

Effect of foreign decrees—Hungarian Foreign Exchange controls.

EGYES v. MAGYAR NEMZETI BANK. 165 F. (2d) 539.

Circuit Court of Appeals, Second Circuit, Jan. 9, 1948. Clark, C. J.

The owner of certain interest coupons on bonds issued by four Hungarian corporations brought an action against the National Bank of Hungary and the Hungarian Cash Office for Foreign Credits, on the theory that the obligors had paid defendants pengoes (Hungarian currency) at the prevailing exchange rate and at a lower rate of interest than the bonds provided, and that defendants have not paid plaintiff his interest as it was due. The payments to the defendants by the obligors were made pursuant to Hungarian Foreign Exchange Control decrees of 1931 and 1935. Summary judgment in favor of the defendants, 71 F. Supp. 560, was affirmed, the Court pointing out that the plaintiff had failed to make any showing that these defendants were liable to him.

With respect to the effect to be given the Hungarian decrees, the Court said in part: “Plaintiff also stresses the unconscionable nature of the transactions, asserting that the defendants have retained pengo deposits which should go to the obligees. But there were always severe risks involved in an investment in foreign bonds; and in view of all that has happened in the world, it seems profitless to characterize the currency maneuvers of foreign governments as unconscionable. Be that as it may, we cannot

give judgment against strangers to a contractual transaction on such a ground or on anything short of a showing of legal right. The situation would be quite otherwise if the action were against the original obligors. Here judgment could be given in an American court notwithstanding foreign currency decrees. . . . Plaintiff also relies on certain decisions of trial or intermediate courts in New York against the Reichsbank and involving the German Devisen Laws. . . . In any event the German laws appear to be sufficiently different to prevent the cases from being precedents here. For those laws substituted the Reichsbank as obligor, releasing the original obligors from all liability. But the Hungarian decrees scrupulously preserved the bondholders' rights against the original contracting parties, effective after the 'expiry' of the decrees. And even the temporary ban against proceedings involving those parties was . . . binding only in Hungary."

High seas—law applicable on vessel—law of flag.

OZANIO *v.* UNITED STATES. 165 F. (2d) 738.

Circuit Court of Appeals, Second Circuit, Jan. 9, 1948. Chase, C. J.

In admiralty proceedings arising out of the collision on the high seas in the Caribbean in 1942 between a Yugoslav merchant vessel and a United States tanker, in which the former was sunk, question arose as to the liability of the United States to share the repatriation expenses of those members of the crew of the Yugoslav vessel who were saved. The court held that it must be shown that the owners of the Yugoslav vessel were liable for the expenses, and that this would be determined by Yugoslav law, stating "whatever the tort liability of a foreign owner of a foreign ship may be to its crew depends upon the law of the country whose flag the ship flies." As there was no evidence of Yugoslav law, the court declined to hold the United States liable to contribute toward this expense.

Aliens—deportation—discretion of Attorney-General to suspend.

UNITED STATES *ex rel.* WEDDEKE *v.* WATKINS. 166 F. (2d) 369.

Circuit Court of Appeals, Second Circuit, Feb. 4, 1948. Magruder, C. J.

The Court affirmed a denial of habeas corpus sought in the District Court to prevent deportation of an alien who had entered the United States illegally as a stowaway in 1926 and who in 1942 had pleaded guilty in a New York state court to the crime of incest with his daughter. He sought to attack the New York conviction on the ground that he had been denied constitutional rights, since he claimed not to have committed the alleged incest. The Court pointed out that deportation on the grounds of illegal entry was unaffected by the validity or invalidity of the state conviction. It added: "Though the judgment of conviction in the state court is strictly

not *res judicata* in the deportation proceedings . . . , it cannot be said that the Immigration Service acted arbitrarily or capriciously in the exercise of a discretionary power by refusing to suspend deportation in the face of a judgment of a court of competent jurisdiction, convicting the alien, upon plea of guilty, of the crime of incest. . . . Assuming that the Attorney General would have discretionary power under 8 U. S. C. A. §155 (c) to suspend deportation of the alien . . . , yet it is clear that the Attorney General is not obliged to entertain such a collateral attack upon the state court judgment. Even if he finds that the alien has been of good moral character, and that his deportation would cause economic hardship to his family, the statute does not say that the Attorney General *must* suspend deportation; it only says that he 'may.' Judicial review of administrative action in such a case, if available at all, is narrowly restricted in scope."

Aliens—exclusion—procedure—right to judicial hearing on citizenship.

UNITED STATES *ex rel.* LAPIDES *v.* WATKINS. 165 F. (2d) 1017.

Circuit Court of Appeals, Second Circuit, Feb. 6, 1948. Chase, C. J.

Habeas corpus was denied by the District Court for the Southern District of New York to a man claiming the right to enter the United States as an American citizen but excluded by the immigration authorities as an alien without an unexpired immigration visa. It appeared that he was a native of Rumania, had entered the United States in 1922, had become naturalized June 27, 1928, and had lived in Palestine continuously from March 1934 until the summer of 1947, when he came to New York by plane. He presented an uncanceled certificate of citizenship, and a "certificate of identity" issued by the American Consulate General in Palestine in 1946.

The decision was affirmed, the court admitting that if he were a citizen he was unlawfully detained, but finding that he had lost his citizenship under section 404 of the Nationality Act of 1940 by prolonged residence abroad. He had not come within any of the exceptions to that section. With respect to the administrative determination of his status by the Board of Special Inquiry, and the Commissioner and Board of Immigration Appeals, the court said: "Though the Board of Special Inquiry had no jurisdiction to exclude if he were a citizen and though it may well be that his certificate of citizenship should be cancelled only in judicial proceedings conforming to the statute, the facts upon which his status depended were in the first instance for the administrative determination of the Board. It was empowered to determine those facts like any others pertinent to a preliminary decision on the question of its jurisdiction. . . . If the appellant's status under the law was that of an alien, the Board had the same jurisdiction to act in respect to him that it would have had as to any other

alien. It is unnecessary to consider whether the relator by reason of his claim to citizenship was entitled to a trial de novo in the habeas corpus proceedings. The facts were conceded and no evidence additional to that before the board of special inquiry was offered."

With respect to the certificate of identity, the court said that even assuming that appellant "justifiably believed" that the certificate extended the statutory period of his permitted residence abroad without loss of citizenship, "it was wholly ineffective under the law for that purpose, since no United States consul has any power to waive the provisions of the immigration laws. . . . The issuance of the certificate or any statements made by the consul in connection therewith could not create an estoppel against the Government."

Aliens—deportation—procedure—judicial review—Administrative Procedure Act.

UNITED STATES ex rel. TRINLER v. CARUSI. 166 F. (2d) 457.

Circuit Court of Appeals, Third Circuit, Feb. 16, 1948. Goodrich C. J.

An alien, admitted to the United States in 1942 as a "treaty merchant," was convicted for violation of a Presidential war order, paid his fine, served the sentence imposed upon him, and was ordered deported on the ground that he had failed to maintain his "treaty merchant" status. Claiming that the Administrative Procedure Act of 1946, 60 Stat. 237, gave him a right to judicial review of the deportation order, he unsuccessfully filed in the District Court for the Eastern District of Pennsylvania a document labelled "Petition for Review," this being dismissed on motion of the respondent. 72 F. Supp. 193; 42 this JOURNAL 225. The Circuit Court of Appeals reversed this decision, Judge O'Connell dissenting.

After pointing out that the case was "ripe for review" despite the fact that the alien had not been taken into custody and placed upon the ship for deportation, Judge Goodrich held that the Administrative Procedure Act gave a right to judicial review of deportation orders, although the statute authorizing deportation stated that "the decision of the Attorney General shall be final." Under the Administrative Procedure Act, judicial review was granted "Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion." Since for many years habeas corpus proceedings had been allowed in certain instances to test the validity of deportation orders, the Court held that the deportation statutes could not be held to "preclude judicial review." He said, in part: "If the Act creates new rights for aliens by providing an earlier review of deportation orders [than by habeas corpus after being taken into custody], the Attorney General will have to modify his administrative practice. . . . Our conclusion is that the case does not fall within the ex-

ception. . . . We are impressed by the fact that in spite of the basic statute's wording habeas corpus proceedings have always been available. Since they have been available the situation cannot be one where judicial review in the past has been precluded. In this we are supported, we think, by discussion found in the legislative history of the Act. In that discussion it was pointed out that statutes which preclude judicial review are unusual. Congressman Walter pointed out to the House of Representatives that this clause was simply put in to provide for the unusual situation where judicial review of administrative action was actually precluded. . . .

"While it might look as though judicial review were precluded by the giving to the deportation order the air of finality, in practice such finality never existed because of the availability of habeas corpus. The fact that review has been judge-made out of the concept of due process does not make it any less a qualification of the statute than if the legislators had put the provision in it when the statute was first drawn. . . .

"We express at this point no opinion whatever upon the merits of the petitioner's case. All we are deciding is that under the Administrative Procedure Act of 1946 he is entitled to have judicial review as one adversely affected by the deportation order after its promulgation but before he has been taken into custody."

Aliens—deportation—pardon—no vested right to legislative pardon.

UNITED STATES ex rel. FORINO v. GARFINKEL. 166 F. (2d) 887.

Circuit Court of Appeals, Third Circuit, Mar. 4, 1948. Biggs, C. J.

An Italian national, held for deportation on the ground of having committed second degree murder within five years after entry to the United States in 1932, sought release on habeas corpus. He had pleaded guilty and been sentenced to eight to sixteen years imprisonment; the maximum sentence was later commuted to thirteen years and ten days, which expired Dec. 15, 1945. He contended that he was in the same status as a person who had received a legislative pardon, in view of the Pennsylvania Act of Mar. 31, 1860, which provided that "the punishment so endured shall have the like effects and consequences as a pardon by the governor." Although this statute had been repealed Sept. 1, 1939, he contended that such repeal could not adversely affect his right to the legislative pardon, and therefore to freedom from deportation. The District Court for the Western District of Pennsylvania granted habeas corpus. The Circuit Court of Appeals reversed this decision, saying in part: "It must be conceded at the outset . . . that if Forino had received a legislative pardon, or presently possesses the status of a person who is entitled to one, he cannot be deported and is entitled to his liberty . . . [citing *Perkins v. United States*, 99 F. (2d) 255 (C. C. A. 3rd, 1938)]. We are unable to perceive, however, how Forino is entitled to such a status. Forino's position in re-

spect to a pardon must, of course, be determined by the law of Pennsylvania. Under that law, as indeed under that of the other States and of the United States, a pardon is simply an act of grace. . . . This is true whether the pardon be granted by the executive or by the legislature. No one has or can acquire a vested right to a pardon."

Aliens—exclusion—procedure—right to judicial hearing on citizenship.

UNITED STATES *ex rel.* MEDEIROS *v.* WATKINS. 166 F. (2d) 897.

Circuit Court of Appeals, Second Circuit, Mar. 9, 1948. Clark, C. J.

The Court affirmed a decision of the District Court for the Southern District of New York, denying release on habeas corpus to a man refused admission to the United States despite his claim of American citizenship. It appeared that he had been in the United States from some time in 1921, when he had been committed to a penitentiary, until 1939, when he was ordered deported because of a robbery for which he had been in prison from 1928 until 1939. He was then believed to be a native of Bermuda, but the British authorities refused to issue travel documents, and in June 1940 he left the United States voluntarily in lieu of deportation. The Immigration Board of Special Inquiry and the Board of Immigration Appeals found that he was not born in the United States (as he had claimed), and that he was a native and citizen of Bermuda.

With respect to the question whether he was entitled to a judicial determination of his claim to citizenship, Judge Clark said: "Here the matter in issue is not one of deportation; rather it is an exclusion proceeding. . . . In fact, there is unanimity in the cases that a claim of American citizenship advanced by one applying for admission does not entitle him to a judicial trial of the validity of his claim. Such a person has only the right to a fair hearing by the administrative agency entrusted with the enforcement of the immigration laws. . . . At this date it cannot be challenged that the administrative determination on the question of citizenship in an exclusion proceeding is conclusive so long as a fair hearing was had and there had been no application of an erroneous rule of law. . . . Moreover, the practical reasons justifying strict proof in the case of deportation, which necessarily severs one from his home and present connections, are non-operative, or at least much less compelling, in the case of exclusion of nonresidents."

Judge Frank dissented, on the ground that the relator was entitled to a judicial trial *de novo* of his claim to citizenship. In cases where the individual asserts birth within the United States, "plus a plainly established period of residence within the United States," Judge Frank believed that "he should be entitled to a writ of habeas corpus, and a trial *de novo* of his claim, whether it be made in support of an assertion of a right to re-enter or in defense against a deportation. *If, on the other hand, the courts are to*

follow the distinction made by my colleagues, a person born in the United States, who had lived here continuously, would, by the mere circumstance of taking a voluntary business trip outside this country, deprive himself of a judicial determination of his right to return to this country." Judge Frank regarded the majority's distinction as particularly inappropriate in this case, where the relator after leaving the United States on a British ship in 1940 as a member of the crew had been captured by the Germans while returning on another ship from South Africa, and sent to a German prison camp, from which he was repatriated in 1945 on the *Gripsholm* when he arrived in the United States and was denied the privilege of entry.

Territorial waters—law applicable to collision; treaties—interpretation of Limitation of Liability Convention.

THE NORWALK VICTORY. 1948 A. M. C. 815.

Circuit Court of Appeals, Second Circuit, Mar. 29, 1948. L. Hand, C. J.

The District Court for the Eastern District of New York dismissed a petition of the owner and bareboat charterer of an American vessel to limit liability with respect to claims arising out of a collision on Apr. 28, 1947 between the American vessel and the British steamer *Merganser* in Belgian territorial waters in the River Scheldt. The British vessel and cargo became a total loss. The value of the American vessel (the limit of claims if the United States law applied) was \$1,000,000; the limit of liability if the Belgian law applied (based on the Brussels Convention of 1924 on the Limitation of Shipowners' Liability, ratified by Belgium but not by the United States and apparently not by Great Britain) would be \$325,000.

This decision was affirmed on appeal, this being regarded as a case in which, under the American law of limitation of shipowner's liability, the owner may not bring an independent action for limitation but must wait to use it as a defense at an appropriate time in proceedings brought against the owner. Although stating that therefore the question raised by the shipowner and charterer "does not arise upon the present record," Judge Hand said:

"The petitioners argue that the limit to the collective liabilities of a shipowner, imposed by Article One of the Limitation of Liability Convention, attaches to the liabilities themselves in the same sense that the division of liability in cases of collision attaches under the Collisions Convention of 1910. The claimants reply that the Limitation of Liability Convention goes only to the remedy, as does our own statute.* Obviously, the answer depends upon the proper interpretation of Article One of the Limitation of Liability Convention, whose language is: 'The liability of the owner of a sea-going vessel is limited to an amount equal to the value of the vessel, the freight and the accessories,' etc. If the petition had said in so many

words that this meant that the limit attached to the right, it would be conclusive upon exceptions, since it would have been an allegation as to foreign law, which is treated as an allegation of fact; and we are not to understand the decision in *The Titanic*, *supra*, as meaning that we would refuse to recognize limits imposed upon an owner's liability by other nations which they attached to the right. In the form in which the case comes up we should read the petition with as favorable an eye as is possible, and we shall therefore construe it to mean that the Belgian law did attach the limit to the right. However, in so doing we wish to guard against any inference that this is our own interpretation of the article."

Enemy aliens—Danzig nationals—nonrecognition of German seizure of Danzig.

UNITED STATES ex rel. ZELLER v. WATKINS. 167 F. (2d) 279.

Circuit Court of Appeals, Second Circuit, Apr. 13, 1948. Swan, C. J.

The Court affirmed a decision of the District Court for the Southern District of New York, 72 F. Supp. 980, 42 this JOURNAL 226, denying release on habeas corpus to a Danzig native who was detained as an enemy alien in view of his conduct during the war. With respect to the argument that he had not acquired German nationality following the German occupation of Danzig in 1939 and the German law of Sept. 1, 1939 "re-annexing Danzig," the Court said: "He argues that since the United States has never recognized the re-annexation of Danzig by Germany that act of conquest is a nullity in law and cannot legally result in conferring German citizenship upon him even with his consent. But the recognition or non-recognition by our Government is irrelevant to the question of election of citizenship in the foreign nation, as was pointed out in the Schwarzkopf case, 137 F. 2d at page 901. See also United States ex rel. Reichel v. Carusi . . ., 157 F. 2d at page 733. Election is a voluntary act by the alien evidencing acceptance by him of an offer of citizenship by the foreign country. On that issue it is immaterial whether or not the United States recognizes the German conquest of Danzig."

Aliens—deportation—based on crime committed while a citizen.

UNITED STATES ex rel. EICHENLAUB v. WATKINS. 167 F. (2d) 659.

Circuit Court of Appeals, Second Circuit, May 3, 1948. Frank, C. J.

Habeas corpus was unsuccessfully sought by a person who was naturalized in 1936, was convicted in 1941 of having conspired to act as an agent for a foreign government without proper registration, and who was denaturalized on Jan. 25, 1944. Deportation was based upon the conviction, and was held to be proper even though he was not an alien at the time of commission of the offense or of conviction.

* *The Titanic* (1913), 233 U. S. 718.

Neutral seizure of scuttled belligerent vessel on high seas—salvage.

THE ODENWALD. 1948 A. M. C. 888; 168 F. (2d) 47.

Circuit Court of Appeals, First Circuit, May 10, 1948. Magruder, C. J.

The Court affirmed the decision of the District Court for Puerto Rico that the United States and naval personnel were entitled to salvage against a German merchant vessel which attempted to scuttle when intercepted by American neutrality patrol vessels in mid-Atlantic on Nov. 6, 1941 (71 F. Supp. 314; 42 this JOURNAL 223). The Court held on appeal, however, that the Attorney General (as successor to the Alien Property Custodian) did not become the "owner" of the *Odenwald*, since the title to the vessel had been requisitioned by the Maritime Commission; the Attorney General merely succeeded, by vesting orders, to the right of the former German owners to just compensation payable by the Maritime Commission on account of the requisitioning.

UNITED STATES DISTRICT COURTS

Sovereign immunity—counterclaims; Litvinov Assignment—extraterritorial effect of confiscatory Soviet decrees.

UNITED STATES v. NEW YORK TRUST Co. 75 F. Supp. 583.

District Court, Southern District of New York, Feb. 4, 1946. Leibel, D. J.

The United States sued defendant trust company for funds deposited with it by the Vladikavkazsky Railway Co., a Russian corporation nationalized by the Soviet Government in 1918, claiming the funds under the Litvinov Assignment accompanying the recognition of the Soviet Government by the United States in 1933. The trust company sought to counterclaim or set-off notes of the Russian (Provisional) Government issued May 1, 1917 and purchased by the trust company from New York houses in 1925. Three individual claimants to the funds were also impleaded.

The court held that the United States was entitled to the funds, and that this right was not cut down by the alleged counterclaim or set-off. The right of the United States was recognized under *United States v. Belmont*, 301 U. S. 324; *United States v. Pink*, 315 U. S. 203; and *Steingut v. Guaranty Trust Co.*, 58 F. Supp. 623. The Court said, in part: "At the time the nationalization decree of June 28, 1918 was issued, the Soviet Government was not officially recognized by the Government of the United States, but the subsequent recognition of the Soviet government on November 16, 1933, had a retroactive effect upon such decrees of the Soviet government, rendering them valid from the time of issuance."

In denying the counterclaim or set-off, the Court said: "The Litvinov Assignment of November 16, 1933, passed no greater rights to the United States Government than were held by the Soviet Government at the time

of the assignment; the position of the assignee is no stronger than that of its assignor . . . we must consider the Trust Company's rights against the Soviet Union, prior to the Litvinov Assignment.

"Let us assume that instead of assigning its claim to the United States Government on November 16, 1933, the Soviet Government on that date instituted a suit in this Court against the New York Trust Company for the \$78,759 standing to the credit of Vladikavkazsky Railway Company on the books of the Trust Company. The Soviet Government's title to those deposits would be good, according to *United States v. Belmont*, supra. In such a suit the Trust Company could not have set-off any claim based on the . . . notes issued by the Russian (Provisional) Government, . . . because the notes and the claims based thereon are unrelated to the bank deposits and the transaction through which the deposit credits were created.

"The set-off which may be asserted against a sovereign is in reality a claimed recoupment. . . . If the claimed set-off to a suit by the sovereign is based 'upon matter unrelated to the primary claim', it is 'the equivalent of an independent suit against the sovereign, which, of course, may not be sued without its consent.' " *Re Monongahela Rye Liquors, Inc.*, 141 F. (2d) 864 (C. C. A. 3rd, 1944), and *Kingdom of Roumania v. Guaranty Trust Co.*, 250 Fed. 341 (S.D.N.Y., 1918, cert. den. 246 U. S. 663) were cited for this proposition. The Court continued: "Disregarding the Soviet Government's repudiation of the notes as obligations of a predecessor Russian Government, and the Soviet's annulment of such obligations by its decree of January 21, 1918, and assuming that the New York Trust Company had a valid legal claim against the Soviet Government based on these notes, nevertheless the Soviet's sovereign immunity would be a shield against the enforcement of the Trust Company's claim. Sovereign immunity is based on international law and it may be asserted even by an unrecognized government. . . .

" . . . I have therefore concluded that even as against the Soviet Government, prior to its recognition by the United States and prior to the Litvinov Assignment, the New York Trust Company could not have set-off against the Soviet claim to the three deposit accounts, any claim based upon these notes of a predecessor Russian government."

As for the individual claimants to the funds, one was the assignee of a Dane and thus held not to be entitled to any preference as a local creditor; and another individual impleaded was the receiver appointed in an action by this assignee. The remaining creditor was the assignee of an American citizen resident in New York, but this person was held to have "slept on his rights." In his case, the Court said with respect to the question whether the Litvinov Assignment gave the United States rights superior to local New York creditors with respect to assets in that state, "I believe that any such state policy [to prefer local creditors] must yield

in a situation such as this to the paramount policy of the federal government, which is a national policy designed to pool all the assets recovered under the Litvinov Assignment in the interest of all American creditors, regardless of their residence in a State in which certain of the assigned assets are located. That is the fair way of dealing with a national and not a local problem. The New York Trust Company and Blaser, American citizens, may some day share in the assets received by their government under the Litvinov Assignment."

Enemy aliens—dual nationality—effect of renunciation of American citizenship.

EX PARTE TADAYASU ABO. 76 F. Supp. 664.

District Court, Northern District of California, June 30, 1947. Goodman, D. J.

American-born residents of the United States, of Japanese race and held for removal to Japan as enemy aliens after they had renounced American citizenship, were released on habeas corpus. Petitioners had alleged that they had renounced American citizenship under duress, and that such renunciation was void. The Court found it unnecessary to examine this contention, placing its decision instead upon the ground that even if American citizenship had been lost by renunciation the persons in question were not liable to removal or deportation as enemy aliens. Judge Goodman said:

"Admittedly all of petitioners were, at the time of their alleged renunciations of citizenship, native born citizens of the United States residing therein. The basis of their detention by respondents is that prior to and at the time of the alleged renunciations, petitioners were also citizens of Japan and that therefore they automatically became citizens of Japan when the alleged renunciations were effected. The court unequivocally rejects the concept of dual citizenship asserted by respondents. The theory that a native born resident American can at the selfsame time be an alien and a citizen of a foreign state, is, in my opinion, judicially wholly unsound. An American citizen as such, owes his entire allegiance to the United States and the United States is entitled to claim from him an indivisible loyalty. A naturalized citizen, at the time of naturalization renounces all allegiance to any foreign government and swears undivided fealty to the United States. No less is the allegiance of a native born citizen, for the Constitution makes no distinction between naturalized and native born citizens. It is constitutionally impossible for a resident citizen of the United States to have at the same time any allegiance to any foreign government.*

* "The dual citizenship concept in the field of international law (with which we are not here concerned) has to do with situations in which two different sovereigns may

"Possession of Japanese citizenship, *in Japan*, by a native born resident American citizen of Japanese ancestry, does not, upon renunciation of American citizenship in the United States, convert that person into an alien until he has voluntarily departed from this country. . . .

"... absent any express declaration of Congressional intent, there is no justification for holding that under the Alien Enemy Act, a native born resident American citizen, who renounces his American citizenship pursuant to Sec. 801 (i), may be deported, at least as long as he continues to reside here.

"All that the expatriation statute (including §801 (i)) purports to effect is termination of American citizenship. It in no way fixes or determines any particular alien nationality for the expatriate."

Jurisdiction—territorial waters—law governing vessel. Thalweg as boundary.

* HICKMAN v. TAYLOR. 75 F. Supp. 528.

District Court, Eastern District of Pennsylvania, Oct. 9, 1947. Kirkpatrick, D. J.

In a proceeding for wrongful death by an administrator of a seaman's estate for death of plaintiff's decedent who was drowned when a tug capsized in the Delaware river, the court referred to two principles of international law. It found that the spot where the accident occurred was in New Jersey rather than Pennsylvania, in view of the fact that international law lays down the thalweg as the boundary rather than the geographical middle of a river, citing *New Jersey v. Delaware*, 291 U. S. 361. On the question whether the New Jersey law or the Pennsylvania death statute (apparently that of the tug) should govern, the Court said: "It is generally accepted law that in all matters relating to the 'internal management or discipline' of a ship the law of the flag controls. Where states, not nations, are involved the law of the domicile of the vessel is equivalent to the law of the flag, but the limitation of the rule is clear and definite and recognized in every case in which the rule has been discussed. If the sub-

lawfully, within their respective territorial confines, claim citizenship of the same person, and he of them, and the international incidents and implications which result. *Talbot v. Jansen*, 3 Dall. 133, 164 . . .; *Perkins v. Elg*, 307 U. S. 325. . . . But that such a person may occupy a dual citizenship status, in the sense that he possesses simultaneously the citizenship of the sovereign state in which he is a domiciled native and that of a foreign sovereign as well, with all the attendant rights and obligations of both, is a principle to which no government would willingly subscribe" [footnote by Judge Goodman].

* Although involving no point of international law directly, this case is digested for the dicta applying international law rules to problems arising between States of the United States.

ject matter of the action arises out of an act within the field of navigation then the rule does not apply because it is a field involving the 'peace, dignity and tranquility' of the state in whose waters the accident occurred."

Naturalization—"good moral character."

PETITION OF DE LEO. 75 F. Supp. 896.

District Court, Western District of Pennsylvania, Jan. 7, 1948. Gourley, D. J.

Petitioner was admitted to naturalization, despite objections of the Immigration and Naturalization Service that he had not shown that he was "of good moral character." In 1934 and 1937 he had failed to provide for the support of his minor daughter; but his last difficulty in that respect had been April 21, 1937, while he petitioned for naturalization May 18, 1943, so that even if this "quasi-criminal" offense constituted lack of good moral character it did not occur during the crucial five years prior to petition. Furthermore the Immigration and Naturalization Service informed the Court in 1947 that it had received information that petitioner was residing with a person not his wife, but no evidence was produced. Petitioner stated that in 1930 he had separated from his wife, that for some years he had lived in rooming houses, that while he was rooming in a house with two other lodgers their landlady was unable to obtain a lease for new premises and that he therefore obtained the lease for her and introduced her as "Mrs. De Leo," but that he had never resided with her in an illicit relationship or provided her with support and maintenance except by his payment of four dollars a week rent for his room.

In finding petitioner of good moral character, the Court said:

"'Good moral character' which an alien seeking naturalization must prove results from acts and conduct of an individual, and is of such a character as measures up to the standards of average citizens of the community in which the alien resides. . . . The standard may vary from one generation to the other.

"I do not believe it is violative of the standards of the American way of life for an individual to secure as his place of abode accommodations in a rooming house. The actions of the petitioner are of such a character as measure up to the standards of the average citizen of the community in which the petitioner has resided."

Expatriation—involuntary character of acts in enemy-occupied territory.

SCHIOLE v. UNITED STATES. 75 F. Supp. 353.

District Court, Northern District of Illinois, Jan. 26, 1948. Sullivan, D. J.

The Court granted plaintiff a declaratory judgment that she had never lost her American citizenship (acquired by birth in the United States), through having joined in her husband's application for Danish citizenship in 1941 or 1942, or having returned to the United States on a Danish passport in 1945. She had lived with her husband and sons in Denmark since 1931, when her husband's profession as an engineer took him there, having returned only in 1937 and 1938 for visits on an American passport. Her husband, an American citizen born of Danish parents, had obtained Danish citizenship in May, 1941. Upon the advice of Danish authorities and in order to protect her two children, she signed a Danish "application for citizenship" applied for by her husband.

Holding that no expatriation was effected thereby, the Court said: "Plaintiff testified that she took no oath of allegiance to Denmark, and performed no acts which she believed would indicate that she intended to become a citizen of Denmark. No affirmative act was shown to have been performed by her indicating that she voluntarily and willingly renounced her American citizenship.

". . . In the instant case everything done by petitioner was done under the compulsion of fear for the safety of herself, her husband and their children, and in the interest of preserving their very lives when they found themselves during World War II in a country occupied by and virtually in command of the Germans. I do not believe that this is the free and voluntary renunciation of plaintiff's American citizenship which I think the statute contemplates. . . .

"The court believes that American citizenship is a priceless heritage involving not only privileges but duties and responsibilities, and that among those duties and responsibilities are primarily loyalty and allegiance to the United States. However, in considering this case, the court also recognized that self-preservation is nature's first law, and that it is quite natural for mothers and fathers to seek in every way to preserve the lives of their children when their safety is threatened. Where an American citizen finds himself and his family, as Paul Schioler did, in a theatre of war, their safety threatened, facing the gravest of dangers, even possible death or internment, and in this extremity, on the advice of officials of the foreign state where he happens to be, makes application for foreign citizenship in an effort to preserve the lives and safety of his family, his wife joining in the application, I am of the opinion that under such circumstances the joinder of the wife is not such a voluntary renunciation or abandonment of her nationality as to forfeit her American-born citizenship."

Leased bases—status as "foreign country."

SPELAR v. UNITED STATES. 75 F. Supp. 967.

District Court, Eastern District of New York, Feb. 11, 1948. Kennedy, D. J.

The widow of a deceased employee of American Overseas Airline, Inc., brought suit against the United States under the Federal Tort Claims Act, alleging that negligence of the United States was responsible for her husband's death on board a plane which had just taken off from Harmon Field, Stephenville, Newfoundland, on Oct. 3, 1946. Harmon Field is part of an area leased to the United States by the British Government under the executive agreement and lease of Mar. 27, 1941. The Federal Tort Claims Act specifically excludes any recovery under that Act for any "claim arising in a foreign country." The Court dismissed the complaint for want of jurisdiction, finding that for purposes of this Act Harmon Field was "in a foreign country."

The Court recognized that under *Connell v. Vermilya-Brown Co., Inc.*, 164 F. (2d) 924, 42 this JOURNAL 482, Harmon Field would be a "territory or possession of the United States" for purposes of the Fair Labor Standards Act. Nevertheless, it found Newfoundland to be a "foreign country," and followed the principle that a "Congressional waiver of sovereign immunity is to be narrowly construed." The Court said: "now, by virtue of the acquisition of bases in Bermuda, Newfoundland, and elsewhere, the word 'foreign' has itself become for some purposes difficult to define, so that the whole expression 'foreign country' has lost much of what clarity of meaning it once had." It added: "under any narrow construction of the statute, the expression 'foreign country' certainly applies to Newfoundland, and even to areas within it over which the United States exercises many, but not all, of the powers of a sovereign."

Effect given transfer of property under Nazi duress.

BERNSTEIN v. N. V. NEDERLANDSCHE-AMERIKAANSCHE STOOMVAARTMAATSCHAPPIJ. 76 F. Supp. 335.

District Court, Southern District of New York, Mar. 5, 1948. Ryan, D. J.

Plaintiff brought an action for the conversion of two vessels owned by a German company all of whose shares he owned, alleging that by duress and coercion of Nazi officials while he himself was in detention in Germany the vessels were transferred to one Boeger and thereafter in 1943 transferred by Boeger to the defendant. The Court held for the defendant on its motion to dismiss the plaintiff's complaint, regarding the case as controlled by the decision in *Bernstein v. Van Heyghen Frères S. A.*, 163 F. (2d) 246 (C. C. A. 2nd, July 10, 1947), 42 this JOURNAL 217. When plaintiff sought to amend his complaint to allege that the persons responsible for the transfer under duress were not acting as officials of the German government, the Court held that the statute of limitations had barred the plaintiff's action.

Military occupation of Austria—arrest, search and seizure in treason prosecution.

UNITED STATES *v.* BEST. 76 F. Supp. 138, 857.

District Court, Massachusetts, Mar. 8, 11, and 26, 1948. Ford, D. J.

Defendant had been indicted in the United States in 1943 for treason, and was on trial for that offense. His motion for the issuance of subpoenas to procure the attendance of witnesses from outside the United States was rejected, the Court saying, *inter alia*, "Aliens who are inhabitants of a foreign country cannot be compelled to respond to a subpoena. They owe no allegiance to the United States. Cf. *Blackmer v. United States*, 284 U. S. 421. . . ."

Defendant's motion to dismiss the indictment and discharge him for lack of personal jurisdiction was also dismissed. It appeared that defendant was arrested without process by British military forces in Austria Jan. 29, 1946, was taken into custody from the British by the United States Army without process some three weeks later and confined in Army prison barracks in Austria, and after being taken into Germany by United States Military Forces was brought by plane to the United States, landing in Massachusetts, Dec. 14, 1946. The Court stated that, "Assuming, *arguendo*, the arrest, detention and removal to be illegal, the motion is denied. . . . However, this court is of the opinion that the military authorities in the occupied countries of Austria and Germany had a right to arrest and detain the defendant where they had, as they did here, reasonable grounds to believe that the defendant was a threat to the safety of the military occupation. Also I believe they had a right to remove him from those countries. The defendant here had been indicted for treason in 1943; there was reasonable ground to believe that he had participated in traitorous conduct toward his own country. At large he might very well be an enemy of the occupation forces organizing resistance movements, feeding the discontent of the population and hampering the restoration of the peace destroyed by the Nazi regime. The least the military should be permitted to do in his case was to arrest him and remove him from those areas. . . . Without such power in an occupied country, military authority would mean little.

"Moreover, under the directive issued to the Commander-in-Chief of the United States forces in Austria, the military authority were empowered to arrest and keep under their control, pending decision by the Allied Council or higher authority, persons 'believed to have committed offenses against his national law in support of the German war effort.' (Joint Chief of Staff Directive to Commander-in-Chief of the United States Forces of Occupation Regarding the Military Government of Austria, pp. 72, 75.) The defendant had been indicted for treason in the United States; his activities were well known to the military. There was nothing unreason-

able, in view of this directive and the conditions that prevailed in Austria, to arrest him, remove him from Austria to the United States, and there turn him over to the civil courts for trial on the charge of treason."

The court later denied defendant's motion for the return of property and the suppression of evidence seized by members of the United States Army and employees of the Department of Justice at the defendant's apartment in Vienna, Austria; 76 F. Supp. 857 (Mar. 26, 1948). The property in question consisted of written transcripts and recordings of broadcasts by the defendant, whose broadcasting on behalf of the German Government was charged as his crime of treason. Commenting on the fact that such search and seizure was not illegal in view of the situation in Austria in March of 1946, the court said: "Certainly our federal courts had no power to issue a search warrant to be acted upon in Austria. . . . The Austrian courts had no jurisdiction over American nationals. . . . The occupying forces had no machinery for the issuance of search warrants. It follows that not only was it impracticable to obtain a search warrant under the conditions that existed in Austria at the time; it was impossible to do so. Thus it is perfectly apparent that search and seizure of Best's property at the time it was made cannot be said to be unreasonable within the meaning of the Fourth Amendment merely because of the lack of a search warrant. . . . Under the conditions that existed, the Army officers had the right to seize any property they would have been justified in seizing had they been able to procure a search warrant."

The Court added: "The United States Army authorities had reasonable cause to believe that Best had aided Germany in the conduct of its war against the United States; they knew the manner in which he aided Germany, namely, by broadcasting or recording broadcasts; and when they searched Best's apartment, it is reasonable to infer, they were searching for property connected with his treason which included the transcripts of speeches that had been used in the broadcasts beamed from Germany to America and means used to secure employment within the German Reich. This was not a general search. It was a search to find and seize the instruments of the crime. . . .

"The circumstances in Austria when the search of defendant's premises and seizure of his papers occurred distinguish this case from any precedent. The Austria of March, 1946, was still in the wake of World War II. . . .

"It is true that the shooting war was over in March, 1946, but the technical state of war continued to exist. More important, the situation described above was such as could only be handled by the exercise of military powers. There were large groups of people of many nationalities to be classified and relocated, all the while they were being fed, clothed and sheltered by the occupying army. Although Austria was designated occupied liberated rather than occupied enemy territory, there was a substantial hostile element of the population to control. The solution of these

problems, as well as the reconstitution of the Austrian state as a functioning entity, required the continued exercise of the war powers of the national government. The war power includes more than the power to wage campaigns in the field. It must include the power to consolidate the gains so made by a military occupation or a military government. . . .

"Under the circumstances pertaining in Austria during March, 1946, described above, the overwhelming necessity of summary type action is apparent. Such action must be uniform for all residents of the occupied area, it being beyond the facilities of the military to distinguish the United States citizens from nationals of other countries on short notice and to apply to them a jurisprudence different from that applied to other persons. This is not to say that anything the Commander may do to United States citizens, any rights whatever he may abrogate, will go unchecked by the courts of this country. However, if he acts reasonably under the circumstances and conformably to military government practice without abuse of his wide discretion, his decisions must stand."

Citing *In re Ross*, 140 U. S. 453, in which the Supreme Court held that the Constitutional guarantee of trial by jury did not extend to an American consular court in Japan, the Court said: "Even if this search and seizure were inconsistent with the rights guaranteed by the Fourth Amendment, it is by no means certain that the defendant's motion should prevail. The protection of the Fourth Amendment does not extend to United States citizens in foreign countries, at least where it is not practicable to apply it. . . .

"Just as it was impracticable to obtain a competent jury in the Ross case, so it is a fortiori impracticable to hedge the powers of the military commander in Austria with restraints upon search and seizure procedure designed for the United States in peacetime. . . .

"The leading case on the subject of power of military government is *New Orleans v. The Steamship Co.*, 20 Wall. 387. . . . It has been widely cited by courts and texts for the general proposition that the only limits to the military authority in occupied territory are those which are imposed by international law and usage."

Naturalization—cancellation—effect on minor child of father's denaturalization.

SANDERS v. CLARK. 76 F. Supp. 489.

District Court, Eastern District of Pennsylvania, Mar. 10, 1948. McGranery, D. J.

Plaintiff, born in Hamburg, Germany, in 1913 of German parents, sought a declaratory judgment that he was an American citizen. In 1922 his father became naturalized and when plaintiff came to Puerto Rico in 1930 he became a citizen by virtue of 8 U. S. Code, §714. In 1942 the government brought denaturalization proceedings against his father, alleging that

naturalization was fraudulently obtained in that the father was not attached to the principles of the Constitution of the United States, and by consent a judgment of denaturalization was entered against the father. Thereafter an order of deportation was issued against plaintiff on the ground that he was an alien unlawfully in the country. Section 338(d) of the Nationality Act of 1940, in force when the father's citizenship was revoked, provided that revocation of citizenship should not result in the loss of citizenship acquired derivatively by wife or minor child, except that this subsection "shall not apply in any case where the revocation and setting aside of the order was the result of actual fraud." The Court denied a motion by the Government to dismiss plaintiff's complaint, holding that the judgment in the denaturalization proceeding against the father was not conclusive against the plaintiff on the issue of whether the revocation "was the result of actual fraud."

Territory—acquisition by conquest—status of Saipan.

BRUNELL v. UNITED STATES. 77 F. Supp. 68.

District Court, Southern District of New York, Apr. 9, 1948. Ryan, D. J.

Plaintiff, who had been injured by negligence of a jeep operator while touring on Saipan as an entertainer for Army personnel on Oct. 16, 1945, brought suit against the United States under the Federal Tort Claims Act (21 U. S. Code, §921 et seq.). That Act provides that it does not apply to "Any claim arising in a foreign country." (*Ibid.*, §943(k).) In her complaint plaintiff stated that on the day in question Saipan was not a foreign country, that prior to that date "Saipan was conquered by the United States Armed Forces and that on the 16th day of October, 1945, and ever since, Saipan has been owned, occupied, managed, controlled and administered by the United States."

The Court granted defendant's motion to dismiss the complaint, on the ground that Saipan was a "foreign country" within the meaning of the Act. Judge Ryan quoted at length from a letter dated Dec. 16, 1947, to the Attorney General of the United States from the Legal Adviser of the Department of State, which said in part: "It is the view of the Department of State that the Island of Saipan on October 16, 1945, was an area under military occupation by forces of the United States following conquest from Japan, the power to which a mandate had been entrusted after World War I pursuant to Article 22 of the Covenant of the League of Nations.

"... no treaty of cession has been signed ceding Saipan to the United States, and no Federal legislation has been enacted incorporating Saipan into the United States. A Trusteeship Agreement with respect to the former Japanese mandated islands, including Saipan, between the United States as administering authority and the Security Council of the United Nations, came into force on July 18, 1947. The United States does not have

sovereignty over Saipan by virtue of this Agreement. The Agreement does not provide for a termination date.

"Accordingly, it is concluded that Saipan has not been and is not a part of the United States, nor a territory or possession of the United States."

In addition to this opinion by the Department of State, Judge Ryan referred to *United States v. Rice*, 4 Wheat. 246, 247 (1819); *Fleming v. Page*, 9 How. 603 (1850); *De Lima v. Bidwell*, 182 U. S. 1, 182, 194 (1900); *Downes v. Bidwell*, 182 U. S. 244 (1901); *American Ins. Co. v. 356 Bales of Cotton*, 1 Pet. 511 (1828); Vattel and Wheaton; in holding that conquest and military occupation did not, alone, result in a change of sovereignty.

With respect to the trusteeship, he said: "The fact that some twenty-one months after the date of the alleged incident—in July, 1947—the United States became the trustee of Saipan by designation of the United Nations does not change the status of Saipan of October 16, 1945; under the trusteeship, Saipan still remains a foreign country. The United States has only undertaken for an indefinite period to act as trustee of it on behalf and for the benefit of the United Nations."

Referring to *Burnet v. Chicago Portrait Co.*, 285 U. S. 1, 5 (1932), the Court held that the expression "foreign country" must be interpreted in the light of the particular statute in question, and concluded that for the purpose of the Federal Tort Claims Act Saipan was a "foreign country." Judge Ryan said: "Congress by the term 'foreign country' in the Federal Tort Claims Act limited the operation of the Act to areas which were actually a component part or political subdivision of the United States. Although, on October 16, 1945, Saipan was in the possession and under the control of the United States by reason of military conquest and occupation, it cannot in any sense be deemed to have been either a component part or a political subdivision of this nation. Congress, by the passage of the Federal Tort Claims Act, surrendered sovereign immunity to suit only in so far as it has expressly so provided."

*Naturalization—effect of neutral alien claiming draft exemption—
belligerent status of Palestine in 1942.*

PETITION OF AJLOUNY. 77 F. Supp. 327.

District Court, Eastern District of Michigan, Apr. 23, 1948. Levin,
D. J.

Naturalization was granted a petitioner who was a Palestinian Arab, despite the Government's objection based upon the fact that in 1942 he had claimed exemption from military service as a neutral alien, under 50 U.S.C.A. appendix, §303(a). That statute exempted neutral aliens but provided that any person applying for such exemption should be thereafter "debarred from becoming a citizen of the United States." At the time of the application for exemption, Palestine was listed by the Selective Service authorities as a "neutral country," but this listing was withdrawn in 1943.

Petitioner showed that he had claimed the exemption because of his inability to support his wife, two daughters, a widowed mother, and a crippled sister, all in Palestine; that on Feb. 9, 1943 (after the increase of dependents' allotments) he had asked to be classified 1-A; and that he was rejected on physical grounds on May 7, 1943.

The Court held that the statute did not forbid petitioner's naturalization, saying that Section 303(a) "applies to a 'citizen or subject of a neutral country.' Was Palestine in fact a neutral country? The action of the Director of Selective Service in listing it as such did not make it so. It was governed by Great Britain as the mandatory power, and Great Britain was at war. . . . The industrial and political life of Palestine was geared to that of Great Britain, as its mandatory, in the war effort. There was no change in the relationship of Palestine to Great Britain between the date of petitioner's registration and December, 1943, when Palestine was deleted from the list of neutral countries. It follows, therefore, that the petitioner's claim for exemption as a citizen of a neutral country was a nullity and without legal effect, since he was not in fact a citizen of such a country and the section could have no application in his case."

With respect to the Government's contention that he was not of "good moral character" because he had applied for exemption, the Court said: "Palestine having been listed by the Selective Service Director as a neutral country, he was erroneously led to believe that he had the legal right to apply for exemption from service. That he took advantage of a privilege which the Director of Selective Service believed was expressly accorded him by law, does not stamp him as one of bad moral character or as one not attached to the principles of the Constitution."

Although no objection was raised on racial grounds, the Court expressed the opinion that "an Arab, a native of Palestine, is of a race eligible for citizenship," following *Ex parte Mohriez*, 54 F. Supp. 941 (D. Mass., 1944), notwithstanding a contrary holding in the present court in *Re Ahmad Hassan*, 48 F. Supp. 843 (1942).

(*Note.* In *Petition of Fatoullah*, 76 F. Supp. 499 (E.D.N.Y. Mar. 5, 1948) it was held that a national of Iran, who on May 7, 1943 sought exemption as a citizen of a neutral country, was debarred from subsequent naturalization, despite the fact that on Sept. 9, 1943 Iran became a co-belligerent.)

Stateless seaman—exclusion or deportation.

STANISZEWSKI v. WATKINS. 1948 A. M. C. 931.

District Court, Southern District of New York, May 12, 1948. Leibell, D. J.

A stateless person, formerly a Polish national, resident in the United States since 1911 and many times serving as a seaman on American vessels both in peace and in war, was ordered excluded from the United States

and detained at Ellis Island at the expense of the steamship company, when he returned from a voyage on which he had shipped from New York for one or more European ports and return to the United States. The grounds for his exclusion were that he had no passport or immigration visa, and that in 1937 had been convicted of perjury because in certain documents he represented himself to be an American citizen. Upon his application for release on habeas corpus, the Court released him upon his own recognizance. Judge Leibell said in part:

"When the return to the writ of habeas corpus came before this court, I suggested that all interested parties . . . make an effort to arrange to have the petitioner ship out to some country that would receive him as a resident. He is a native-born Pole but the Polish Consul has advised him in writing that he is no longer a Polish subject. This Government does not claim that he is a Polish citizen. His attorney says he is stateless. The Government is willing that he go back to the ship, but if he were sent back aboard ship and sailed to the port (Cherbourg, France) from which he last sailed to the United States, he would probably be denied permission to land. There is no other country that would take him, without proper documents.

"It seems to me that this is a genuine hardship case and that the petitioner should be released from custody on proper terms. . . .

"What is to be done with the petitioner? The government has had him in custody almost seven months and practically admits it has no place to send him out of this country. The steamship company, which employed him as one of a group sent to the ship by the Union, with proper seaman's papers issued by the United States Coast Guard, is paying \$3.00 a day for petitioner's board at Ellis Island. It is no fault of the steamship company that petitioner is an inadmissible alien as the immigration officials describe him. . . .

"I intend to sustain the writ of habeas corpus and order the release of the petitioner on his own recognizance. He will be required to inform the immigration officials at Ellis Island by mail on the 15th of each month, stating where he is employed and where he can be reached by mail. If the government does succeed in arranging for petitioner's deportation to a country that will be ready to receive him as a resident, it may then advise the petitioner to that effect and arrange for his deportation in the manner provided by law."

OTHER FEDERAL COURTS

International industrial property rights—U. S.-British Patent Interchange Agreement.

YASSIN v. UNITED STATES. 76 F. Supp. 509.

United States Court of Claims, Mar. 1, 1948. Littleton, J.

An American citizen brought proceedings against the United States to obtain compensation for the manufacture by or for the Government, or use by it, of certain devices claimed to infringe plaintiff's United States and United Kingdom patents. The complaint sought to hold the United Kingdom Government liable as well, referring to the Patent Interchange Agreement between the United States and the United Kingdom dated March 27, 1946 and effective Jan. 1, 1942 (60 Stat. 1566; TIAS No. 1510). The defendant's demurrer was sustained except in so far as concerned a claim against the United States for alleged infringement of plaintiff's United States patents. The Court discussed at some length the Lend-Lease Act of Mar. 11, 1941 and the Patent Interchange Agreement, and held that neither gave plaintiff any right to sue the United Kingdom in the United States Court of Claims, nor to recover from the United States for any infringement of British patents. The Royalty Adjustment Act of Oct. 31, 1942, 56 Stat. 1013, was also held to be of no aid to plaintiff.

War—duration—meaning of "engaged in war."

STINSON v. NEW YORK LIFE INSURANCE CO. 167 F. (2d) 233.

Court of Appeals, District of Columbia, Mar. 15, 1948. Clark, A. J.

This was an appeal from the decision of the District Court for the District of Columbia, which had held that the death of an officer of the United States Army who fell from a hotel window in France in October, 1945 was a death "while the insured is in the military or naval forces of any country engaged in war," and that therefore only a restricted payment was due from the insurance company. 69 F. Supp. 860, 42 this JOURNAL 219. The decision of the lower court was reversed.

The court stated that the meaning of the phrase "engaged in war" would vary according to the purpose for which it was employed, and drew the distinction between its use in a private contract and in a "matter of public law," citing M. O. Hudson, "Duration of the War between the United States and Germany," 39 Harv. Law Rev. 1020 (1926); *Kneeland-Bigelow Co. v. Michigan Central R. R. Co.*, 207 Mich. 546, 174 N. W. 605 (1919); *The Elqui*, 62 F. Supp. 674 (E. D. N. Y. 1945). Continuing, Justice Clark said: "To the layman, and to the soldier, the words 'engaged in war' convey the thought of actual warfare, terminated by the capitulation of the enemy forces. The aftermath of actual warfare necessitates political and legal cognizance of a 'state of war,' but that is something apart from the common understanding of the time when the country ceases to be 'engaged in war.' President Truman's message to Congress, delivered September 6, 1945, epitomizes this difference in thinking, for early in his message he said, 'The end of the war came more swiftly than most of us anticipated.' Later, in the same message, when speaking of certain wartime statutes made effective 'in time of war,' 'during the present

war,' or 'for the duration of the war,' he said, 'The time has not yet arrived, however, for the proclamation of the cessation of hostilities, much less the termination of the war.' . . .

"It can hardly be questioned that the spontaneous celebrations which occurred among the citizenry and troops of the victorious allied forces following announcement of the unconditional surrender by Japan were nothing more than exuberant jubilation occasioned by the commonly expressed thought that the war was over.

"... 'Engaged' and 'war' have a meaning intimately related to actual warfare in the mind of a soldier, and while he may well contemplate occupation duty following the period of actual warfare, it requires no elaboration to point up his distinction of war and the consequential duty it may entail."

The court also pointed to the inconsistent position taken by this insurance company and sustained by the court in *New York Life Ins. Co. v. Bennion*, 158 F. (2d) 260 (C. C. A. 10th, 1946), to the effect that death during the Japanese attack on Pearl Harbor, prior to the declaration of the existence of a state of war, was death due to "war" within the meaning of an insurance policy (see 41 this JOURNAL 680).

(To like effect, see *New York Life Ins. Co. v. Durham*, 166 F. (2d) 874 (C. C. A. 10th, Mar. 4, 1948).)

State succession—property rights—Church property in Alaska.

BOLSHANIN v. ZLOBIN. 76 F. Supp. 281.

District Court, Alaska, May 27, 1948. Folta, D. J.

Members of the Russian Church at Sitka, Alaska, brought suit against the priest and Metropolitan of the Greco-Russian Church in America, seeking to recover possession of the church buildings and land, and claiming that as members of the church they were the true owners by virtue of the treaty of 1867 by which Russia ceded Alaska to the United States. Article II of that treaty provided that the cession included title to public property, including "public lots" and "vacant lands," but added: "that the churches which have been built in the ceded territory by the Russian government, shall remain the property of such members of the Greek Oriental Church resident in the territory, as may choose to worship therein." The defendants demurred, claiming title under a patent of July 27, 1914 from the United States Government and contending that at most the treaty recognized ownership of the churches and a mere possessory right to the lands.

The demurrer was sustained. The Court pointed to practice at the time of the cession and since, indicating that the claim of members of the Churches was no more than a possessory right and that therefore the plaintiffs did not have legal standing to maintain the action. In the course of the opinion Judge Folta discussed the general practice of the United

States with respect to property rights after changes of sovereignty over territory, saying in part: "At the outset it may be noted that private rights of property, whether absolute or merely equitable, are not affected by a change of sovereignty. *Soulard v. United States*, 4 Pet. 511. . . . But the United States has always maintained that, although a title to land that was perfect and complete at the time of the cession would be fully protected by the treaty, yet, as to land to which the claim rested on an imperfect or incomplete title, the legal title remained in the United States until confirmed or patented. *Ainsa v. New Mexico & A. R. Co.*, 175 U. S. 76. . . . In dealing with such titles Congress has provided for their establishment by statute, in courts of justice, or in the Land Office or before boards. . . . And the Supreme Court has consistently held that judicial tribunals in the ordinary administration of justice have no jurisdiction or power to deal with such claims, that power being reserved to the political department."

The Court pointed out that here the only foundation for plaintiff's claim to title lay in the treaty itself, which "falls far short of constituting a grant." The Court added: "As distinguished from imperfect and incomplete titles a grant from a former sovereign needs no confirmation. The treaty itself is sufficient. *United States v. Percheman*, 7 Pet. 51, 86, 87. . . ."

STATE COURTS*

Criminal prosecution—effect of prior conviction in Greece for crime in California after Greek refusal to extradite Greek national—expatriation.

COUMAS *v.* SUPERIOR COURT. 192 P. (2d) 449.

California Supreme Court, in Bank, Apr. 23, 1948. Spence, J.

Petitioner sought, and was granted, a writ of prohibition to restrain the defendant Superior Court from proceeding with his trial for murder and assault with a deadly weapon, alleged to have been committed in California on April 20, 1932. Petitioner immigrated to the United States from Greece in 1907, and became naturalized as an American citizen Feb. 25, 1914. The Greek Government never gave its consent to his naturalization. He resided in the United States until shortly after the date of the alleged crimes, when he fled to Greece. After an indictment had been returned in California in 1934, the United States sought to extradite petitioner from Greece. Petitioner successfully resisted this attempt, as the Council of the Court of Appeals at Nauplia, Greece, held on Aug. 26, 1934, that he had "never divested himself of Greek citizenship," and that Greek law absolutely forbade the surrender of Greek subjects whose extradition was requested, but required their trial in Greece. Subsequently he was tried for these same acts in the Felony Court of Corinth, Greece, and was con-

* Arranged alphabetically by states.

victed on Oct. 16, 1935, of manslaughter and of unlawful carrying of a firearm, but was acquitted of assault. He was sentenced to consecutive terms of four years and of four months, which he served (with credit for thirteen months of preliminary imprisonment). Thereafter he returned to the United States, and was arrested on Sept. 26, 1947 under the 1934 indictment.

After referring to the Greek laws and to the Extradition Treaty then in force between Greece and the United States (under which neither country was bound to deliver up its own citizens unless such citizenship was obtained after perpetration of the crime for which extradition was sought), the Court said in part:

“ . . . Accordingly, petitioner properly maintains that Greece had jurisdiction over his person because it had never consented to this expatriation, and over the offenses because of its penal law.

“While the United States had long supported the doctrine of expatriation in the fullest sense—as involving a ‘natural and inherent right’ of a person to depart from his country of origin and absolve himself from his original allegiance, upon identifying himself with another political community, through naturalization . . . such principle of election as a matter primarily for the individual’s determination is contrary to the common-law concept of ‘perpetual allegiance’ to one’s native land, which still prevails in many countries today, particularly on the continent of Europe, and precludes the voluntary severance of national ties unless the consent of the government is obtained. . . . So it is with Greece as its pertinent law is recited. . . . Admittedly, petitioner never obtained the consent of the Greek Government for his foreign naturalization—in fact he never made such request—though compliance with such formality was necessary to bring about his loss of Greek citizenship. The taking of the oath of allegiance to the United States and the accompanying renunciation of national ties to any foreign state upon petitioner’s naturalization in this country would not automatically divest him of his Greek citizenship, for the matter of denationalization is one for domestic regulation by the government concerned under its particular laws of expatriation. . . . The so-called American doctrine of ‘voluntary expatriation’ as a matter of absolute right cannot postulate loss of original nationality on naturalization in this country as a principle of international law, for that would be tantamount to interference with the exclusive jurisdiction of a nation within its own domain.

“The matter of extradition is a proper subject for treaty negotiation between sovereign nations, and any point of controversy with regard thereto will be governed by the prevailing stipulations of the contracting powers. . . . In the present case, the Treaty of Extradition with Greece expressly provided that ‘the State appealed to shall decide whether the person

claimed is its own citizen,' an explicit stipulation according full recognition to any variance in the laws of expatriation existing between the two signatory powers and indicating their mutual intent that the citizenship status of the person seeking refuge in either's territorial limits should be determined in a manner consistent with its standards. Such stipulation in the Treaty . . . effectively countervails any argument that the United States nevertheless intended that its long prior established position on the 'absolute right of expatriation' should prevail in an extradition demand upon the Greek Government and would permit disregard of the latter's law under which its national, irrespective of his American naturalization, might still be deemed its citizen. So here, according to Greek law, petitioner on April 20, 1932, the date of his alleged commission of the crime . . . , was still a citizen of Greece by reason of his failure to procure the necessary consent to his foreign naturalization and, upon return to its territorial jurisdiction, he was amenable to prosecution under its penal statutes. . . . The Greek Government so decided and in accordance with its 'local laws,' petitioner was tried for the offenses committed in this country and sentence was imposed upon the basis of his adjudicated guilt. . . .

"There is no force to the argument that petitioner may not effectively plead the defenses of 'prior conviction' and 'former jeopardy' before the respondent court because the Greek trial proceedings and judgment were procured by 'fraud or collusion.' . . . Petitioner admits that he 'escaped to Greece to avoid punishment,' but, as he maintains, he 'did not seek his trial by the courts of Greece until the American Government requested his arrest and extradition and the Greek laws were thereafter applied in proper and orderly fashion.' At that time it was entirely proper for him to rely on whatever advantage might accrue to him by reason of his claim of Greek citizenship and resist surrender to this country, for 'a treaty of extradition is available to persons having rights secured or recognized thereby, and may be set up as a defense to a criminal prosecution established in disregard thereof.' (35 C. J. S., Extradition, §25, p. 353; *Dominguez v. State*, Tex. Cr. R. 92, 234 S. W. 79, 83, 18 A. L. R. 503.) There is no evidence in the record indicating any fraud, collusion, trickery or subterfuge on the part of petitioner in procuring, according to Greek law, the determination of his guilt on the criminal charges in question. . . . In other words, petitioner's trial in the Greek court was not a mere farce, resulting in a sentence of imprisonment of inconsequential degree as related to the import of the criminal charges against him, but, on the contrary, its 'bona fide' character in every respect is clearly shown by the record."

Immunity of foreign government-owned corporation—extraterritorial effect denied confiscatory decrees.

PLESCH v. BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI. 77 N. Y. S. (2d) 41, 43.

New York, Supreme Court, Special Term, New York County, Nov. 5, 1947, Benvenaga, J.; Appellate Division, 1st Dept., Feb. 2, 1948, Van Voorhis, J.

Two stateless persons resident in Switzerland, and a foreign corporation formed by them, brought an action in New York against the Haitian National Bank to recover damages for the conversion of securities the plaintiffs had deposited with defendant's New York office. Plaintiff Arpad Plesch was born in Hungary, and therefore was placed on the United States Proclaimed List and comparable lists of other countries during the war. It appeared that by various decrees the Haitian Government had purported to nationalize the securities in question after Haiti became a belligerent against the Axis countries.

The Special Term granted defendant's motion to vacate an attachment of defendant's property, Justice Benvenaga saying in part: "Under the circumstances, the conversion, if any, occurred in Haiti, not by the defendant but by the government of Haiti. For, as the defendant at all times acted under governmental orders, the conduct of the defendant with respect to the securities does not amount to conversion (see 65 C. J. 67, §109; 48 C. J. S., International Law, §18). The grievance of the plaintiffs is not against the defendant but against the Republic of Haiti."

On appeal, this decision was reversed, Justice Shientag dissenting. Justice Van Voorhis said for the court: "Defendant was organized under the laws of Haiti to engage in business as a commercial bank, and did business as such with plaintiffs in 1940 and 1941. All of the stock of defendant was later acquired by the Haitian Government. Defendant has become largely an instrumentality of the Republic of Haiti. Nevertheless, before the courts of New York, it retains its status as a commercial bank in its relations with plaintiffs."

With respect to the quoted statement by the lower court, he said: "That would be true only if the defendant acted on behalf of a government within the scope of valid governmental directives.

"The effect and validity in New York State of the confiscatory decrees cannot properly be decided in defendant's favor on a motion to vacate the attachment on these affidavits. These decrees purport to go beyond what this country or our other allies in the war did in relation to the properties of these plaintiffs. There is nothing in this record to show the reasons for this action of the Republic of Haiti, nor to show what it did except to expropriate, by name, the private properties of plaintiff Arpad Plesch and of the corporate plaintiff, unconditionally, without opportunity to be heard, and without compensation. The property of Leonie Plesch was not nationalized. . . . It is not before the court whether the owner's property

rights were intended to be suspended for a limited time, as for the duration of World War II (they purport to have been expropriated in perpetuity), nor does it appear what was the special exigency which dictated this summary action by a foreign government so much more drastic in its nature than that which was taken by the United States. There is nothing in this record to show that Arpad Plesch or the corporate plaintiff was engaged in promoting the advantage of the enemy or were enemy aliens, or that they had been guilty of any other offenses against the Haitian government or its peace and tranquility justifying confiscation under the Law of Nations. No procedure purports to have been provided to enable plaintiffs to vindicate their title or right to possession of their properties, by establishing that they were not enemies, nor allies nor agents of enemies. Other matters bearing on whether recognition should be accorded to these decrees await development by evidence at the trial.

"Therefore, at least in advance of evidence of facts and circumstances surrounding the making of these decrees showing them to comport with our public policy, with which on their face they are so inconsistent, it cannot be assumed that they are valid for the purposes of this motion. *Vladikavkazsky Ry. Co. v. New York Trust Co.*, 263 N. Y. 369 . . . ; *Petrogradsky Mejdunarodny Kommerchesky Bank v. National City Bank*, 253 N. Y. 23 . . . ; *James & Co. v. Second Russian Ins. Co.*, 239 N. Y. 248 . . . ; *United States v. Bank of New York & Trust Co.*, D. C., 10 F. Supp. 269, 271, . . . affirmed 296 U. S. 463. . . . The defendant must be regarded as having failed to have sustained the burden of upholding their validity . . . , and the attachment must stand or fall on the basis that there was no legal expropriation.

"It is well settled that one cannot successfully assert as a defense to an action for wrongfully dealing with property that he acted pursuant to governmental orders, if such orders were invalid or ineffective. . . .

"It should be borne in mind that for the purposes of this motion the purported nationalization of this private property by Haiti does not protect defendant, which owed to plaintiffs the duties of a commercial bank with which their securities had been deposited for safekeeping. Defendant did not act vis a vis the plaintiffs as fiscal agent of the Republic of Haiti. The circumstance that it also exercised the latter function does not limit or condition its liability to plaintiffs as a bank, and could not justify its taking plaintiffs' securities and delivering up for confiscation to the Haitian government, even if the agreement of deposit had not expressly provided . . . that the securities were to be kept in New York City and were not to be transported to Haiti.

"Assuming *arguendo* that defendant, as depository under the terms of the agreement, could have held these securities in Haiti for the account of plaintiffs as well as in New York, this could not have justified the defendant in removing them from New York to Haiti if that meant ipso facto ceasing

to hold them for the account of plaintiffs and delivering them up to a third party, even a government. . . . Defendant explicitly asserted that the assets of the corporate plaintiff had been nationalized and that consequently only the Government of Haiti was empowered to act on its behalf. The same information was given . . . with respect to plaintiff Arpad Plesch.

“Confiscation in ostensible compliance with foreign edicts which are void in this State, has sometimes been compared, in its legal effect, to action by thieves or marauders. Petrogradsky Mejdunarodny Kommerchevsky Bank v. National City Bank, *supra*, 253 N. Y. at pages 29, 30. . . .”

BOOK REVIEWS AND NOTES

Devletler Hukukunun Tedricî İnkişâfı. (The Progressive Development of International Law). By Herbert W. Briggs. Istanbul: Ismail Akgun Matbaası; 1947. Pp. 48(46).

The series of lectures given by Professor Briggs at the University of Istanbul and the University of Ankara in 1947, now made available in the Turkish and English languages as No. 4 of the Publications of the Turkish Institute of International Law, provides brief but useful and timely discussions of some basic topics. These topics include "The Role of International Law," "International Legislation and the Law of Treaties," "International Law and Human Rights," "The Problem of World Government," and "The International Control of Atomic Energy."

Perhaps the most striking impressions derived from the lectures flow from their thoroughly realistic tone and the emphasis placed upon work to be done. "The science of international law has survived all the wars since Hugo Grotius," Professor Briggs observes, "and is on the threshold of thrilling and challenging new tasks" (p. 16). Without losing sight of the limitations of this law as a means to an end, the author carefully examines the law's function as a device for human welfare, whether it is expressed through custom, through ordinary treaties, or as a system of rules capable of being made effective through the existing machinery for collective action. Following a brief consideration of some of the assumptions which seem to make a world state desirable to its advocates (pp. 36-37), Professor Briggs expresses the convictions that the United Nations already provides adequate procedures, that the scarcely tapped resources of the Charter can be developed and its metes and bounds extended, and that the "present alternative to the United Nations is not world government but chaos" (p. 38). On the subject of atomic energy emphasis is placed upon the point that ". . . a treaty which merely prohibits atomic weapons puts a premium on violations because observance of the treaty can be regarded as more dangerous to the security of a state than the illicit production and possession of atomic bombs." The American (Baruch) proposals of June 14, 1946, are viewed as designed to make observance "more attractive and less dangerous than violations would be," and Professor Briggs concludes that it should not be impossible to establish a system for the international control of atomic energy within the framework of legal obligations as they exist in the United Nations Charter (pp. 45, 46).

ROBERT R. WILSON

Of the Board of Editors

Grundlehre des Völkerrechts. By Ernst Sauer. Cologne: Baldwin Pick; 1947. Pp. 336.

There is in the heart of Europe a gigantic mountain of four hundred million cubic meters of rubble which still goes under the name of Germany. One angle of the desperate situation of the tens of millions who inhabit this desert of destruction is the lack of books, including text-books. To supply them with a tool of instruction in the field of international law was the modest intention of the author. To review the book justly it must also be taken into consideration that the author has been cut off for ten years, and is still cut off, from foreign literature in this field.

Under these circumstances a slender volume in small format can only give an elementary introduction. In brief terms the whole international law, from its concept to neutrality, is covered. The UN is discussed and its Charter and the Statute of the International Court of Justice are reprinted in the annex in the original English. Apart from this modern developments of the last ten years could, of course, not be included.

The author makes use of all the literature, German and foreign, available to him up to 1939. His exposition of the laws of war and neutrality relies on this reviewer's *Treatise* (Vienna, 1935). His method is Continental European, making no use of cases. Some points are specially interesting, as the discussion of the status of a conquered state, which the victor does not wish to annex, in international law (pp. 84-86).

The author, a disciple of Herbert Kraus, writes in a democratic and internationalist spirit. He is an adherent of Christian natural law; hence his particular discussion of the general principles recognized by civilized nations, of the fundamental rights of states and his acceptance of the *bellum justum* theory. He is, in this method of approach, and otherwise, strongly influenced by Verdross.

JOSEF L. KUNZ

Of the Board of Editors

Características Esenciais do novo direito internacional. By Ilmar Penna Marinho. Rio de Janeiro: Imprensa Nacional; 1947. Pp. 475.

After World War I many Europeans wrote about what was then, in French, called: *le nouveau droit des gens*. Many times those writers failed to give a correct analysis of the positive law and falsified it by presenting their own postulates *de lege ferenda* as being the positive law. Such writings were also popular in this country.

After World War II the UN, contrary to the League of Nations, had in this country a very critical reception by international lawyers on the whole. It is in Latin America that books flourish since World War II on what, this time in Spanish or Portuguese, is called: *el nuevo derecho de gentes*. One may quote the book of this title by the Colombian Manotas Wilches or

the book by the Brazilian Jorge Americano, recently also translated into English.

The book under review follows the ideas of Americano; it treats of the reconstruction of international law, based on the Atlantic Charter and the four freedoms as its fundamental norm. The international law of the author is neither that of yesterday nor of today, nor is it likely to be that of tomorrow.

This ultra-modern law of nations is inspired by democracy, justice and peace, and characterized by the following traits: sovereignty gives way to interdependence; basically democratic structure of the new international community; broadening of international law; a new philosophy of treaties; treaties must be just, first of all; the principle of the sanctity of treaties must develop in the sense of the creation of an obligatory international legislation; judicial settlement of all disputes; peace treaties must be acceptable to all concerned; individuals are not only recognized as persons in international law, but form its basis; consultation will play a role such as cabinet meetings do today in the United States; war—a survival of troglodytic thinking—is a crime, internationally to be punished; neutrality disappears completely; strong collective security.

But, contrary to the literature appearing after World War I, the author does not want to prove that these ideals are already embodied in positive law. These ideals are here the starting-point from where to lash ferociously against this positive law which constitutes treason with regard to the Atlantic Charter.

The author castigates the Meetings of the Council of Foreign Ministers and gives an annihilating critique of the Paris Peace Conference of 1946. No good can be seen in the UN: its original sin is its violation of the democratic principle of the equality of states, its lack of universality, its "cult of physical force," the precariousness of its system of collective security, the institution of the veto. It is "a totalitarian entity." In consequence the success of the UN is for the author much more problematical than was success for the League in 1920 (p. 99).

The author also takes a gloomy view of the present world situation of the "two blocs." He considers that we are living again the situation of 1938 and holds that the possibilities of a third World War are very great.

He sings the praise of the Inter-American System, built on equality, respect of sovereignty, and independence. He praises its system of consultation and collective security. But there are near-contradictions in the author's ideas: sovereignty is abolished, he tells us; the new international community is basically democratic. But at the same time respect of sovereignty, equality, and strictest non-intervention (apart from aggression), non-intervention in the internal or external affairs, either single or collective, are to prevail. The author takes a strong stand against the UN interference with Spain, against Uruguay's proposal of collective inter-

vention. Sarcastically he remarks that such measures as the UN took against the Spain of Franco have only consolidated Franco's position and that the American measures against Argentina have resulted in Peron's overwhelming victory. On the other hand the author states that the fundamental condition of peace is the spiritual unity of the world although he has to admit that we are still far away from such unity.

The 259 pages of text are followed by the reprint, in Portuguese, of documents from the Atlantic Charter to the Constitution of the UNESCO and a bibliography.

JOSEF L. KUNZ

Of the Board of Editors

Il Mare Territoriale e la Sua Delimitazione. By Franco Florio. Milan: A. Giuffrè; 1947. Pp. 116.

This slender monograph is rich in facts, wise observations, and conclusions. It is realistic and logical without much concern for legalistic theories.

The author treats this most important subject of jurisdiction over marginal seas under three main headings: The Rights of the Coastal State; The Rights of the International Community or The Limitation of the Rights of the Coastal State; and The Delimitation of the Territorial Sea. He offers an interesting project for an international convention on the subject based on the recognition of diverse types of territorial waters.

The conclusions reached by the author may be briefly summarized:

I. There exists a fundamental divergence of views concerning the proper limit of territorial jurisdiction over the marginal seas, as was demonstrated by the futile attempt to reach an agreement at the Conference for the Codification of International Law at The Hague in 1930.

II. Each nation has reserved to itself the right to determine the extent and the defense of its territorial waters. The determining factor in each instance has not been a uniform rule of international law but, rather, special national interests. The adherence of England, for example, to the classic Three Mile Limit has been dictated in the main by its claims to the right to fisheries off the coasts of other nations.

III. It is imperative that there should be an international agreement permitting each nation to maintain its jurisdiction over varying limits, depending on the peculiar configuration of its coastal waters and the special national interests involved.

IV. This international agreement should be based on the frank recognition of the fact that every nation reserves the sovereign right to the exercise of a "protective jurisdiction" over its contiguous waters for the enforcement of its laws, the conservation of its resources, and the safeguarding of national security.

The author rightly attaches great significance to the action of the United States in abandoning the Three Mile Limit by the two proclamations of President Truman, September 25, 1945, which asserted American claims over the "continental shelf" for the conservation of fisheries and the resources of the subsoil under the high seas contiguous to the United States. The salient portions of these memorable documents are as follows:

"Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the national resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the United States, subject to its jurisdiction and control."

* * *

"In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coast of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale."

The United States by this reasonable and bold action broke the legalistic bonds of the Three Mile Limit, which so seriously hindered the enforcement of the Prohibition laws when the rum-runners impudently defied the revenue officers by playing hid and seek along the invisible edge of a mythical boundary drawn three miles from the sinuosities of the coast. By this action the United States has asserted the sovereign freedom of all other nations which may desire to exercise this essential right of protective jurisdiction over their marginal seas.

The needless confusion of thought concerning jurisdiction over marginal waters, which the author, unfortunately, has failed to clarify sufficiently, has been due to a misinterpretation of the famous dictum uttered by Bynkershoek in 1703, that "the control of the land extends as far as cannon will carry; for that is as far as we seem to have both command and possession." But it should be remembered that he added: "I am speaking, however, of our own times, in which we use these engines of war; otherwise I should have to say in general terms that the control from the land ends where the power of men's weapons ends." (See address by P. M. Brown on "Protective Jurisdiction over Marginal Waters," page 15, *Proceedings of American Society of International Law*, 1923.)

This modest monograph deserves much wider consideration than it may receive. It draws attention to a divergence of views concerning a most important matter which can easily give rise to serious controversies unless the nations can agree on the recognition of the principle of protective jurisdiction, irrespective of any arbitrary delimitation of territorial seas.

PHILIP MARSHALL BROWN

Of the Board of Editors

Prisoners of War. Washington: Institute of World Polity, School of Foreign Service, Georgetown University; 1948. Pp. vi, 98. \$1.50.

The advent of total war, with its scientific methods of mass destruction, would appear to make futile any further discussion of the rules of warfare. The atomic bomb makes no concession to legal conduct; nor does the modern mania known as genocide whereby one nation tries to exterminate another by cold mass murder; nor, for that matter, does modern economic warfare, where one belligerent tries to starve an opponent into submission. But in spite of the general threat of total war to human existence, there was and will still be a place for certain rules of the game, mutually convenient to both sides. Cynics may ridicule this attitude, but those who have directly experienced the war will probably agree that in certain spheres such rules did actually mitigate some of the brutalities of the recent war. This was the idea that inspired the present book. It is the product of some two years of collective study by a group of former prisoners of war and other persons who had firsthand experience in dealing with such problems. In a section on the history of the effort, an account is given of each member of the study group. Thirty participated, under the direction of Professor Ernst H. Feilchenfeld. Of this number, 15 were airmen who had been shot down, 4 were infantry, 2 artillery, and 1 tank corps. The others had handled enemy POW's, in the European, Burma-China or Pacific theaters. Finally, the proposals and comments of the group were distributed to all members of the Institute of World Polity, for their comments, and some of these are also incorporated in the final study.

The study group is known to the present reviewer, as he had the privilege of sitting in on some of the early discussions, over two years ago. As combatants, they admit the trend towards barbarism, but refuse to believe that modern civilization will accept the abandonment of all restraint in warfare. However, it is worth noting that the men who fought the war and saw the merits of mutual restraint in action belong to the generation which does not control policy. This may account for some of the sadistic mass brutalities from on top, over which the combatant in the field had no control whatever. But if the participants belong to the generation which does not make policy, they can at least influence policy-making. This is the objective of the present book.

As far as the reviewer is aware, this is the first postwar study on a subject which deserves universal interest. The recent war is still to close to us to have forgotten our concern over the treatment of prisoners. While Americans worried over the actual survival of those who had fallen into Japanese hands, the other Allied nations worried over the millions of their brethren who were either exterminated by the Germans or deported as slave labor. The present study is not just a collection of views and complaints but a constructive approach directed towards improved solutions.

As the preface states, the discussions differed essentially from the work of both the average prisoner-of-war organization and the customary kind of official effort, by presenting practical and thoroughly considered suggestions for the revision of the present rules.

Although the problems dealt with in this book are mainly concerned with the treatment of military prisoners, no chance is neglected to stress the importance of the problem of the vast multitude of civilians who still fall outside existing international conventions. While the problem of civilians is not directly dealt with in the present study, it is included as part of the exigencies of modern total war. The introductory chapter will in fact give the reader food for thought as to his future security. It is an impressive review of the factors that may affect, mainly unfavorably, the lot of military POW's as well as civilians. Among those factors are general brutalization (genocide, slave labor massacre and general terrorization), guerilla warfare, total economic warfare, mass bombings, and the virtual disappearance of neutral powers.

Of the practical proposals made for the revision of the existing rules, a number may be mentioned as illustrative of the general approach. The question which first arises is that of POW status. The time of greatest peril for a prisoner is the period immediately following capture when he is held for identification and interrogation. During this time he may be beaten, tortured and even killed, almost as a pariah and without being able to invoke the rules protecting recognized prisoners of war. To remedy this situation, the study group calls for a revision of Article 72 of the Geneva Convention of 1929, as now permitting a belligerent too much leeway in handling its captives. The proposed revision would provide that recognition of POW status be given not later than a week after capture. Also in connection with POW status are two proposals arising directly from modern warfare. It is suggested that paratroopers be recognized as legitimate POW's, a treatment not too often accorded them in recent war. It is also proposed that persons suspected or accused of war crimes should be regarded as POW's until duly convicted. The book cites a few of the many instances of forced-down airmen who were badly maltreated by the German authorities, and sometimes tortured and killed by mob action while the authorities looked on. On the other hand it is in a way surprising that more of this did not take place after a severe mass bombing.

As regards the care of POW's the situation is complicated by the general economic deterioration that takes place on one side or the other as the war progresses. Food, clothing, sanitation, shelter and transport are bound to be affected by the economic or war conditions in a country, which, however, should still permit a minimum set of standards to be observed. As regards shelter, the study calls attention to the increasing difficulty of ensuring the physical safety of POW's against bombings. Even assuming good will on

the part of a belligerent, the chances of keeping POW camps out of bombing reach will be slight on the European continent.

The problems of labor also become increasingly complicated under the conditions of modern total war. In the chapter devoted to this subject, the different gradations of labor, forced or voluntary, are discussed. The group as a whole was of the opinion that "a captor state which feeds a prisoner has a right to obtain work from him" (p. 47). The real issue, however, is not the ordinary work normally called for by captor states, but the virtual enslavement of a population under military occupation, either as deportees or as civilian internees in their own country. In the recent war, western POW's did not fare too well in German hands, but neither did the five or six million civilians who were deported for slave labor to Germany. Unless some prohibiting rule is laid down against this modern trend we may also have a reversion to the Roman practice of permanently enslaving military captives. Pointing in this direction is the practice of retaining POW's long after the cessation of hostilities or the re-establishment of peace. The group as a whole is definitely in favor of repatriating POW's as soon as possible after the end of hostilities.

An entire chapter is devoted to the ways and means of ensuring compliance with the accepted rules. Considerable discussion centered around the International Red Cross as an inspection and welfare organization. The IRC did not come off too well in this discussion. Some of the group suggested that it be replaced by a new international organization. But other members, while severely criticizing the IRC, wondered whether "any other kind of protective agency would have done better under the circumstances." Without going into the merits of the case, it can be noted that the present reviewer took occasion to question a number of POW's and civilian internees now in European refugee camps, and found that complaints against the International Red Cross were widespread. Some of the complaints were directed against the organization as such, but many appeared to be directed more against the Swiss.

Of significance is the proposal made by some members of the group that a study of the whole problem of POW treatment be entrusted to the Human Rights Commission of the Economic and Social Council of the United Nations. This raises the question whether this organ of the United Nations could go beyond the mere drafting of a new convention or whether it should leave enforcement to the IRC or some similar organization. As regards enforcement, there is the further question of whether the United Nations could survive a major conflict. Apart from any particular enforcement agency, there is also the precedent set by the present war crimes trials. Unless these trials are accepted in a serious manner, by governments, there is no reason to suppose that any convention will be taken seriously in the future.

In conclusion, the present reviewer received the definite impression that this study should not remain as an isolated undertaking, but should be followed by similar studies, in order to focus worldwide attention on the problem. The present study should be supplemented by European and Asiatic versions, based on the experience of a vast number of former POW's and civilian deportees and internees. The present book could be used effectively as a guide for such additional study groups, carried out, perhaps, under organizations such as the United Nations societies.

M. W. ROYSE

Rome

La Jurisprudence des prises maritimes et le droit international privé. By R. Jambu-Merlin. Paris: Librairie Générale de Droit et de Jurisprudence; 1947. Pp. 335.

The relatively big volume under review is a French study of prize law from the point of view of the conflict of laws. The author justifies this study by the insufficiency of the French literature on prize law in general and by the need for a special study of this type. The author restricts himself, therefore, to a very brief introductory statement of the international law aspects of prize law (pp. 13-21). In the "Conclusion" he deals with the decline of prize law in World War II and its causes and pleads for its preservation.

The bulk of the book treats the problems of conflict of laws arising in prize law. The author's effort is to furnish a theory of the problem which arises where there exists a conflict between a private right and a rule of international law. The author wants to determine what place is here given to the normal rules of conflict of laws and in how far they are modified under the influence of international prize law. By studying British, American, French, German, Italian, Belgian, Japanese, and Chinese Prize Court decisions, the author tries to give, at the same time, a study in comparative law, as to the different private laws and the different systems of conflict of laws involved.

The book is divided into two principal parts. The first part, including capture, *deductio infra praesidia*, and the judgment of the Prize Court, deals with the creation of rights. Here the problems of title in ships and goods, and the rules for the determination of the proprietor, are investigated; further the methods of proof, the distinction between *ante bellum* and *post bellum* contracts, the problems of public policy, trading with the enemy, fraud, interdiction of transfers *in transitu* and so on. Then follows a study of questions concerning the interpretation of contracts of maritime sale, the special problems as to co-ownership in vessels, unincorporated business associations, and corporations. This part concludes with the problem of claims of creditors and insurers in ships or goods.

The second part is devoted to the investigation of the recognition of the rights of the captor, created by the judgment of the prize court, and of those deriving their rights from the captor in the courts of third states. There is an interesting chapter on the role of treaties (pp. 291-301).

Interesting too, is the technique of the author, rare in a French or, in general, any other Continental writer: he puts himself in the place of the prize judge. While literature is used, the presentation is mainly by the exposé of cases, according to the "case-method." British prize cases naturally constitute the bulk of this material.

The book is competently done and constitutes certainly an enrichment of the French literature on this subject. But it suffers from two weaknesses from a non-French point of view: these problems of conflict of laws have always been covered by good works in English and German on this topic and are to be found in the magnificent treatise by Verzijl. On the other hand only very few prize decisions of World War II are used. We need, therefore, a Verzijl for World War II.

JOSEF L. KUNZ

Of the Board of Editors

Aviation Accident Law. By Charles S. Rhyne. Washington: Columbia Law Book Company; 1947. Pp. x, 315. Index.

The fast-growing body of judicial decisions relating to air navigation and transportation has found in Charles S. Rhyne a diligent observer and recorder. In *Airports and The Courts* (1944) he dealt comprehensively with the cases arising out of the operation and use of airports; in the present volume he examines the cases bearing on liability arising out of aviation accidents. The scope of the book includes not only the liability of carriers, but also that of manufacturers, repairmen, venders, bailees, and insurers; it includes also an examination of the cases dealing with workmen's compensation. The last chapter is devoted to accident law in international air transportation, with an analysis of the international conventions and of the cases arising thereunder. An English translation of the Warsaw Convention is given in an appendix.

As in his earlier work, the author eschews broad generalizations, and the book is little more than a digest of cases. Nevertheless it is interesting to note that while the author in his introduction points out that the common law rules applied by the courts to aviation cases were developed chiefly for surface transportation and "do not fit air transportation with any real degree of satisfaction to either those claiming damages in aviation accidents or to those against whom these claims are made," Senator McCarran, in a foreword, expresses an apparently contrary conclusion, saying that a study of the decisions examined in the book "reveals how the rules of justice, as laid down by precedents, stemming back through

the years, have, in nearly every instance, dictated a fair and equitable result." This difference in evaluation may have an important bearing on the fate of the proposals for statutory legislation on aviation accident liability, and indicates a need for more extensive and critical analysis of the functioning of the rules now applied by the courts.

For the specialist in international law the book is mostly of indirect interest. In helping to develop or modify uniform international rules on aviation accident liability the international lawyer must keep in mind the probable impact of national legal traditions and practices on both the formulation and the application of the international rules. Mr. Rhyne's book, written lucidly and simply, is a valuable guide to the American judge-made law on the subject. It will be very useful to the general practitioner of law who has to handle aviation accident claims.

OLIVER J. LISITZYN

Columbia University

The Right to Fly. By John C. Cooper. New York: Holt; 1947. Pp. x, 380. Appendixes. Index. \$5.00.

The conquest of the air by man has presented the international lawyer with the fascinating task of observing, understanding, and participating in the development, within the span of a single generation, of an entirely new field of law—the international law of the air. To the sociologist and historian of the law a rare opportunity has been given to study the forces and the processes which are shaping a body of new rules of behavior for the international community. To the statesman and the practical man of affairs air power—military and commercial—is of continually growing importance. *The Right to Fly* is "a study in air power" and is evidently designed for the layman rather than the specialist. Yet it contains much material of interest to the lawyer, the sociologist, and the historian as well as to the man of action. John C. Cooper possesses the happy combination of an intimate knowledge of international air transportation gained by many years of practical experience as lawyer, executive of Pan-American Airways, and participant in numerous international conferences, with the intellectual interests and ability of a scholar. He is now a member of the Institute for Advanced Study at Princeton.

"Air power" is defined as "the ability of a nation to fly" or "the ability to act in the air space." It embraces both military and non-military aviation. The indivisibility of air power into "military" and "civil" aviation is one of the central theses of the author. There are two basic "elements" of air power. One is the capacity to fly, made up of such basic factors as geographic conditions, resources, population, industrial development, and political organization, as well as of the more immediate factors of aeronautical industries, facilities, and operating establishments,

civil and military. The other is control of the air space and "the right to fly," without which the capacity to fly must remain latent. It is the author's treatment of the second element—"the right to fly"—that will be of the utmost interest to the lawyer and the legal historian. The author traces the history of the problem of sovereignty in the air and the right to operate international air services from its inception in the first decade of the twentieth century to the efforts of ICAO to draft a multilateral air transport convention, stressing the underlying factors that have determined the policies of the various nations. Of special interest is the informative account of the drafting of the 1919 Convention on Air Navigation and a still more detailed account of the discussions at the Chicago Conference in 1944. With respect to the latter the author speaks with the authority of a participant. His statement that the committee which prepared Article 5 of the Chicago Convention "fully understood that the limitations authorized could be so stringent as to result in actual prohibition of the entry of nonscheduled transport aircraft" (p. 173), is first-hand testimony on the meaning of this vague and controversial provision, since he took part in the work of the committee—a fact which he modestly fails to mention. There is also an interesting analysis of the results of the Bermuda Conference of 1946. Much space is devoted to the efforts of the Allies in 1919 to agree on the means of depriving Germany of military air power without depriving her of civil aviation or of the control of her own air space, and to the ultimate failure of the devices then adopted. Many interesting documents bearing on this matter are reprinted in the appendices, which also contain texts of the 1919 Convention (with amendments) and the Chicago Convention and agreements. The author attempts to apply the lessons which he draws from the failure to control German air power to the future peace treaties with Germany and Japan. He also examines the problem of disarmament in the air and the relations which it may be necessary to establish between the UN Security Council and ICAO in order to prevent aggressive use of air power. The last three chapters are devoted to an examination of the air power position of the Soviet Union, the British Commonwealth, and the Western Hemisphere. These chapters are illustrated by excellent charts of air distances from certain air power bases of the three great powers.

A brief review can hardly do justice to the richness of the book in original and provocative thought. Some interesting aspects of the problem of air power, such as the relatively strong position in commercial aviation of countries like the Netherlands and Sweden which have little air space under their own control, are not adequately discussed. It is gratifying to know that the author is continuing his studies in air power and in the history of air law.

OLIVER J. LISSITZYN

Columbia University

Progress and Prospects of The United Nations. Edited by Ernest Minor Patterson. Philadelphia: The American Academy of Political and Social Science; 1947 (*The Annals of the American Academy of Political and Social Science*, Volume 252, July, 1947). Pp. vii, 183. \$2.00

This useful and stimulating volume ranges in content from a few simply worded contributions by general observers of affairs to technical discussions by specialists of great experience directly bearing upon their topic. A large variety of United Nation problems is touched upon, ranging from children (Aake Ording) to the monetary fund (Harry D. White), and from Columbia to ideological conflicts within the United Nations (Ralph Henry Hadow). Others deal with world trade under the ITO (Raymond F. Mikesell), human rights (Taraknath Das), disarmament and security (Alexander Cadogan), the Security Council (Norman J. O. Makin).

The course of events since these lectures were delivered at the annual meeting of the Academy in April, 1947, is convincing evidence that James Burnham's sagacious and philosophic analysis of the United States and Communistic conceptions of the United Nations ("What is the Purpose of the United Nations?") provides a needed fundamental approach to the problems of the United Nations, and a basis for diplomatic action that is more real and promising for peace—if at all possible—than any of the "technical" or "well-meaning" discussions offered at the meeting. Mr. George Soule's "U.N.'s Purpose: Another View" is, by contrast, an eloquent piece of wishful thinking that is alarming because it was and unfortunately still is propounded by many hopeful people as well as by those whose destructive ends it unintentionally serves. One is tempted to say that Mr. Burnham's analysis should precede any weekly review of last week's events in our Sunday newspapers, since it gives meaning to current happenings in and outside the United Nations, which otherwise might seem unconnected and accidental.

JOHN BROWN MASON

Oberlin College

L'Organisation des Nations Unies. By Lazare Kopelmanas. Vol. I. *L'Organisation constitutionnelle des Nations Unies.* Fascicule I. *Les services constitutionnelles de l'O.N.U.* Paris: Sirey; 1947. Pp. 327. Index.

This appears to be the beginning of the first large constitutional study of the United Nations. It is explained that the entire work will consist of three volumes. The first is divided into two parts, of which the first is before us, and the second will deal with organization. Volume II will also be divided into two parts, covering the maintenance of peace, and economic and social organization; the third volume will contain conclusions and

analytical tables. The study is being made with the assistance of the *Centre National de la Recherche Scientifique*.

The work is not formulated as a commentary, article by article, on the Charter; the headings refer rather to problems or functions. It is not based solely upon the text of the Charter, but goes heavily into the *travaux préparatoires*, and draws extensively from the experience of the League of Nations. There are no references to literature; the study is based entirely upon documents, including those of member governments.

One hundred pages in Section I are devoted to the historical development of the Charter. The author complains, and frequently reiterates the complaint later, that the most fundamental documents, the plans submitted by the four sponsoring powers at Dumbarton Oaks, have never been made public.* From the deliberate lack of precision in the Charter, from its unaccustomed length, its heaviness of style, and its general resemblance to a Presbyterian covenant, the author deduces that an American document was the base of the Charter.

Section II, covering the next one hundred and fifty pages, deals with three problems relating to the validity of Charter provisions. In the first place ratification provides the legal base for internal execution of the treaty, and he discusses at some length the means of putting the Charter into effect within the state. He takes up next modifications of the Charter, which may be made by amendment, by periodic revision, or by an informal process, such as interpretation. Here too he thinks that ratification should be accompanied by evidence (*e.g.*, legislation) to show that the instrument ratified can be put into internal effect. In the third place he discusses the relation of the Charter to other sources of international law, such as treaties, customary law, and internal law. This leads into a long discussion of the "domestic questions" clause, and he sees no way to draw a line between the internal and the international order except by express statement of the distribution of powers between them. In general he asserts that the Charter is more than an ordinary treaty since it creates a continuing social organism.

Section III asks how the content of the Charter is to be determined. The author seems to think that it is in harmony with established practice that each organ (and each member state?) should interpret the Charter for itself, referring disputes when desired to the Court for advisory opinion. He feels that external evidences must be used in interpreting the text.

The pace of the book is leisurely. It could doubtless have been written in fewer words, but there is time and space for many reflections and for consideration of many obscure points. On an average, two-thirds of every page consists of footnotes; one wonders why much of the footnote material

* The reviewer hopes that the Department of State can arrange for the publication of these documents.

was not put into the text. The author draws upon a competent knowledge of the League of Nations. The work is both critical and constructive. It is, at least in this initial part, the most useful work which has yet appeared dealing with the United Nations.

CLYDE EAGLETON

Of the Board of Editors

Voting Procedures in International Political Organizations. By Wellington Koo, Jr. New York: Columbia University Press; 1947. Pp. x, 349. Appendices. Index. \$4.00.

In this penetrating and well documented monograph Dr. Koo starts out with an analysis of voting procedures in some recent nonpolitical international organizations such as UNRRA, FAO, ICAO, IMF, ILO, and the International Bank for Reconstruction and Development. Next he takes up briefly the Vienna Congress System, the Concert of Europe, and, a little more extensively, the League of Nations. The *pièce de résistance* is an exhaustive treatment of the voting procedure in the Security Council based partially on unpublished documentation of the Committee of Five at San Francisco. There follows a less extensive examination of the voting procedures in the General Assembly, the ECOSOC and the Trusteeship Council. There are frequent cross references and even some repetition of argument.

The author's main objective is to demonstrate "the functional theory of voting procedures." There is, admittedly, no general rule governing the structure and voting procedure in postwar international organizations. Voting rules of pre-United Nations organizations generally suffered from a "confusion with respect to the two forms of collective action," namely the method of international conferences and the method of international organizations. The unanimity rule which prevails in a conference "is merely an expression of the independent status of the states participating therein" and states are bound only if they consent. In an international organization, however, the unanimity rule means "that no action can be taken unless all agree, which is to seriously hamper the requirements of functional efficiency upon which any such 'action' agency should be founded."

For the sake of efficiency and workability, so runs the author's argument, the Charter of the United Nations, by providing for majority vote, has abandoned "once and for all the fallacious assimilation of the unanimity rule from conferences to organizations." The generalization then follows that "to the extent, therefore, that an organization is meant to be operative in an important field of international coöperation, rather than to have merely advisory functions, principles of equality written into the text will vary in inverse ratio to the actual degree of importance assigned to that

organization by its most powerful members." Great Powers, accordingly, in political as well as non-political organizations will protect themselves by providing for their concurrent vote whenever and wherever decisions of major importance are involved.

In the case of the General Assembly, decisions, according to their importance and their intended "practical coercive effect" on world opinion, are reached by a simple or a two-thirds majority. The ECOSOC, which has chiefly advisory functions, provides neither for the permanent representation of the Great Powers nor for a special voting procedure. The Trusteeship Council, a body "which is only partly and indirectly political," provides, unlike the ECOSOC, for permanent representation of the Great Powers, that is, of "the political forces which will dominate the successful or unsuccessful operation of the entire trusteeship system." On the other hand, in its quality as a non-political and supervisory body, all decisions are taken by a simple majority vote.

In the Security Council there is barely a pretense at equality of voting: "The Security Council, armed with extensive coercive powers, and on whose shoulders rests the burden for maintaining peace and security among nations, is primarily a political organization, and the wide prerogatives given to its principal and permanent members are in full accordance with the principle that the privilege shall be in proportion to responsibility."

Thus as a consequence of the negation of "the academic niceties of the so-called juridical equality" the United Nations is deemed to be a more "realistic" organization than was the League of Nations and nothing short of a "monument of international political engineering."

As to the general thesis of the author, there is no doubt that there is a persistent, though by no means universal, trend towards a "functional" conception of voting rules in modern international organizations. This is so, it is believed, not because the ideas of equality and independence and the rule of unanimity, about which the author says many unkind words ("... confusion of juristic theories frequently parroted by publicists...") were without sound foundation backed by precedent, but rather because governments have come to realize that "effective decision-making" need not be confused with "the making of effective decisions." The introduction of the former has unfortunately, perhaps, not yet led to the latter, and, consequently, the departure from the principle of unanimity is more apparent than real.

This is particularly so in the Charter of the United Nations. The General Assembly and the other organs of the United Nations, excepting for the moment the Security Council, have no doubt, by adopting unqualified or qualified majority voting rules, gained in the number of recommendations and resolutions recorded in the Official Records. From this point of view they are organs of "effective decision-making." But their "de-

cisions" if we can call them such without causing confusion, are not necessarily effective.

In the Security Council the situation is not substantially different. Any action taken by the Security Council under Chapter VI is in fact not binding upon the parties. What may make it binding is the application of diplomatic methods preceding or following the voting of decisions. However, even in the case of action under Chapter VII which the members assume to regard as binding, the members, while surrendering to majority voting, reserve their ultimate consent. For in order to be binding such decisions must be taken by the Security Council, "in accordance with the present Charter." And who will judge whether the Security Council's decisions are, or are not, "in accordance with the Purpose and Principles of the United Nations"?

The author's eulogies of the "realism" of the Charter are perhaps premature and will not necessarily find general acclaim. It is not yet sufficiently understood that voting procedures at the present juncture of international relations, at any rate, are no adequate substitute for sound diplomacy. This is so not only among the members of United Nations generally, but particularly so among the five Great Powers.

Moreover the machinery for effective decision-making introduced in the Charter does not compensate for other weaknesses of the Charter. Simple majority voting is properly dismissed by the author. There are, however, other ways to strike a happy medium between practicality and workability than through the qualified voting procedure, conducive to paralysis of the organization which can be overcome only by resort to action outside the organization.

Dr. Koo has given us a very valuable contribution to the study of voting procedures in international organizations. He has performed an exceedingly careful and thorough job, particularly in connection with the history of Article 27 of the Charter. In spite of this thoroughness there are questions to which the reader will find no answer, perhaps because they are not related strictly to the main theme. Also it would have been very interesting to learn, perhaps from the unpublished documentation upon which Dr. Koo was free to draw, what sort of understanding, if any, there was among the Big Five regarding the sparing use of the veto. Dr. Koo, however, leaves no doubt about his own position, for he ends on this keynote: "At San Francisco the Great Powers gave their pledge to use in moderation the veto which each possesses. However it is obvious that for this promise to be effectively kept recourse to formal vote-taking as a method of decision in the Security Council must itself be used to a minimum."

LEO GROSS

Fletcher School of Law and Diplomacy

tion is criticized as the weakest in its development of democracy, but the relative prosperity in the Dutch colonies permits higher expenditures for social purposes. Criticism is directed at the British imperial system on the score both of democracy and social measures, although the author finds considerable improvement in recent years. The independent republics of Cuba, Haiti, and the Dominican Republic are treated cursorily and superficially as part of the region but outside the main scope of the book. At the end, with disappointing brevity, are given the author's conclusions and recommendations.

The greatest emphasis is placed upon social and political questions, especially the race issue. It is made clear that the race issue is not simply one between white rulers and owners on the one hand and people of color on the other. It is a highly complex issue, involving a mulatto middle class, whose political and economic importance is rising, and the general mass of the population which in some colonies is basically negro and in others is part negro and part West Indian. The recent rise of political parties and labor unions with a trend toward greater local responsibility and more democratic governmental organizations is pointed out. Stress is laid upon the importance and relative absence in most colonies of adequate educational facilities.

The author is a liberal in a sense in which that word is frequently used today. His sympathies are with the colored inhabitants. He tends to blame the dominant whites for much that is wrong and he shows particular distaste for the traditional pomp and circumstance of British imperial rule and the stubborn conservatism of the Dutch. He favors a steady transfer of power and responsibility from the whites to the men of color. He recognizes the dangers, particularly the danger of a ruthless mulatto dictatorship, and acknowledges that the imperial nations must continue to bear responsibilities and to rule, particularly in the most backward areas. But he prefers to risk bad government with least supervision by the whites and cites a quotation by Gov. Tugwell of President Roosevelt in support of this proposition.

Mr. Blanshard also recognizes that parallel to the political and social problem is the economic problem created by the pressure of steadily expanding population upon inadequate and dwindling natural resources. A highly promiscuous sexual amorality yields babies in a steady production line; the area's only sure crop. Tropical medicine has greatly reduced the traditional safety valve of a high death rate caused by disease. At the same time, the limited arable land is worn out, bad soil practices accelerate the deterioration, world markets shrink for the limited number of crops which can be grown, and plant diseases often eliminate even these. The result is the situation which President Hoover so bluntly described in the case of the Virgin Islands—"a poorhouse." No specific solution for the economic problem is suggested. There are a good many references to

tourist travel as the most hopeful palliative, if not a solution, and even with regard to this Mr. Blanshard warns that it may aggravate racial tensions. Although it is not flatly stated, the implication is that the imperial powers must spend vastly greater sums in the area regardless of the likelihood of recovery.

In the briefly summarized conclusions it is urged that the economic problem should be approached on a regional basis and that a regional organization should be created with sufficient funds to reorganize the economic situation and with power to make its decisions effective. This has been the thesis of the American representation on the Caribbean Commission from the start.

This reviewer regrets that the author devoted so much of his book to exposition of the problem and so little to an analysis and presentation of his suggestions. He wonders, for example, whether the political solutions recommended, which may involve a substantial reduction in the production of crops and income of the colonies, will have a favorable effect upon the likelihood that the colonial powers, particularly powers such as England which are hard pressed financially, will put additional money into the colonies. Yet great sums would be necessary to achieve the rise in the standard of living and bettering of educational and health facilities which he favors. Democratic legislatures which must vote the necessary money and pass on the tax bill to voters tend to be chary of voting funds when the possibilities of return are not attractive, or where they have doubts as to how effectively the funds will be expended. Most important of all, the regional approach is recommended although there does not seem to be very much that the various colonies can contribute to alleviating each other's lot. The suggestion is superficially persuasive and one can clearly see the advantages of exchanges of experience and common research projects. But there would seem to be limits to regionalism as a solution.

The international political problems involved in regionalism are only hinted at. On the one hand arises the question as to how far the colonial powers, the British, the Americans, the Dutch and the French, can be persuaded to adopt a pooled approach, having in mind that some of the imperial countries have much richer dependencies than others and that in all of them there are traditional economic, social, and cultural ties which have developed over a century, and that there have developed political systems which differ widely, ranging from the French conception that its colonies are a part of France to the American conception that they are being prepared for self-government and independence.

Equally puzzling is the relationship of such a regional organization to the Pan-American system. One phase of the issue is made apparent by the insistence of Honduras that the British should withdraw from Belize, and the hints from neighboring Republics that the Guianas might well be evacuated, the criticism of Anglo-Saxon United States rule of Spanish

Puerto Rico and the action of the 1940 Havana Conference with regard to possible transfer of the colonies as a result of the war. Would the Americas welcome such a regional entity except within the Pan-American system? Would the Caribbean republics participate in it or would they feel that they, as independent nations, should not be asked to go into partnership with colonies? These and other related questions are not discussed.

The cruise ships are beginning to revive their pre-war runs. The sleek liners of the Vesuvius Fruit Company—with apologies to O. Henry—are once more touching at Caribbean ports for short stops, unloading batches of tourists for a few hours of gaping and spending, then reloading them and sailing away. To the vast majority of tourists these ports will be what the cruise writers describe as idyllic spots with palm trees, soft breezes and exotic native life with strange and colorful customs and rhythmic music.

It probably would not add to the enjoyment of the cruise if the tourists should read Paul Blanshard's book. But if they did the trip would contribute notably to American understanding of one of the great problems which faces the industrial democratic nations today—and especially the United States which is the greatest and richest of them all. That problem concerns the extent of their responsibility for the standard of living of the people of the Caribbean and similar "backward" areas.

JOHN E. LOCKWOOD

Of the Board of Editors

The Man in the Street. By Thomas A. Bailey. New York: Macmillan; 1948. Pp. 319. \$5.00.

Traditional histories have emphasized men and events. The great issues of American history have been portrayed in terms of political parties and their leaders. The public opinion to which the debates have been addressed has tended to be a shadowy background until more recent historians have emphasized increasingly expressions found in the contemporary press and correspondence. Even these expressions were those of men who molded and formulated public opinion and not necessarily those of the average citizen.

Two foreign wars within a generation and the tremendous expansion of communication media have undoubtedly increased enormously in recent times the number of questions of foreign policy upon which the average citizen has some information and definite opinions. At the same time the newly invented opinion polls measure those opinions not only for the benefit of historians and readers of newspapers but also for the guidance and direction of politicians. Today public opinion—or what the public official thinks is public opinion—has a vastly greater and more direct effect upon foreign policy than ever before.

In this book Professor Bailey applies more than twenty years of study of American foreign policy to an analysis of the effect upon that policy of the opinions of what he calls "the man in the street" and again defines in the first chapter as "the sovereign citizen." He makes full use of the records of the opinion polls in his discussion of more recent events. In his preface he states that he considers his work as pathbreaking and that the treatment is broadly interpretive and suggestive rather than exhaustive. The result is a stimulating and provocative book, if somewhat depressing and not entirely satisfying.

The approach is topical. Each chapter deals with a phase of American opinion and describes its effect upon particular policies and decisions. Between a general introduction and a page and a half of conclusions there are twenty-five chapters, each dealing with a separate phase. Thus the author discusses the effect of the point of view of immigrant groups, of different religious groups, of American inertia and apathy towards foreign affairs, of ignorance and selfishness, and of our fear that we shall be made suckers, our devotion to the Monroe Doctrine, and a host of other subjects.

These topics are so chosen and presented that American public opinion tends to appear as having had a uniformly undesirable effect upon foreign policy. This accounts, at least in part, for the depressing quality which the reviewer found in the book. It tends to suggest the conclusion that since American public opinion is so ignorant and prejudiced, it is impossible to have both democracy and an intelligent foreign policy. In fact the author comes close to saying this when he says: "As a nation we may be reasonably well informed, yet we are not well enough informed to exercise understandingly our present direct and hence dangerous control of foreign affairs" (p. 130).

The topical treatment tends to produce a repetitiousness in that the organization and presentation of the material in each chapter is pretty much the same as in every other chapter, and in addition the same historical event appears in a number of different facets of American opinion. This is in considerable measure compensated for by a provocative quality in the book which derives partly from interest in the subject matter but considerably from its style. The author uses pungent sentences to characterize elements of opinion and to express his views on policy. He disposes of great issues in slashing strokes of an informed pen. When, for example, he says with respect to Theodore Roosevelt's utterances regarding acquisition of the Panama Canal, "Even Hitler was usually more discreet" (p. 53), one's attention is held as much by the author as by the subject.

To the lawyer who aspires to see a world increasingly subject to a rule of law conceived in justice, applied impartially and predictably, the picture of a world in which statesmanship is measured by the accuracy with which the statesman reads the horoscopes of George Gallup and Elmo Roper is hardly reassuring. Such a world calls for vague pronouncements, flexible

commitments, and the maximum of fluidity and maneuverability. This is another of the depressing features of the book. But if this book does not satisfy the lawyer, it may offer a persuasive explanation as to why the State Department acts the way it does and why the docket of the International Court of Justice is not more crowded.

The first of Dr. Bailey's conclusions is that "leadership of the highest quality is urgently needed." Yet he presents the subject in such a way as almost to indicate the futility of leadership. The events referred to in his pages are generally those in which an attempt by a political leader to take a strong and right course was overborne by the opinion of the public. The author states that "Little is gained by elevating men to public office and then overbearing them with mob pressure" (p. 153). Similarly the work of such organizations as the Foreign Policy Association and the Council on Foreign Relations, which the author appears to think well of, is minimized as to its effect. In fact the Foreign Policy Association is mentioned only twice and the Council only once. In a similar tenor the effort of the State Department to conduct broadcasts explaining its work is passed off in the following sentence: "The State Department during World War II undertook to explain its work through some innocuous and rather rapid broadcasts, but it was condemned by certain Congressmen for putting out propaganda" (p. 296). Nor is emphasis given to the present policy of the State Department to consult with interested organizations in regard to important matters of policy and to name their representatives as advisers to United States delegations to International Conferences, as was notably the case at the United Nations Conference at San Francisco. Through this policy there is real opportunity for cross-fertilization of opinion and the reconciliation of points of view.

Basically Professor Bailey's purpose appears to be to make a strong plea for better popular education for foreign policy. It is clear that this is vitally necessary. He bases his plea upon some pretty straight criticism of the average American citizen. This reviewer would have been more satisfied if the criticism had been more tempered, if the tenor of the book were more constructive. Certainly on many issues there tends to be an equilibrium of pressures and the area for leadership is relatively broad. American public opinion has kept pace with our rapidly expanding international responsibilities to an extent that would have seemed impossible twenty years ago. This analysis might well be supplemented by another which would weigh, on the one hand, the effectiveness of the different educational media such as schools, lectures, membership organizations, press, radio, and moving pictures and, on the other hand, discuss the areas within which political leadership in the executive or legislative branches may tip the balance in the formulation and execution of policy.

JOHN E. LOCKWOOD

Of the Board of Editors

NOTES

International Court of Justice. Publications. Series D. Acts and Documents Concerning the Organization of the Court. No. 1. (Second edition, May, 1947.) Pp. 142. \$1.50.

International Court of Justice. Yearbook 1946-7. Pp. 236. \$2.20.

These are the first two volumes which have been published by the International Court of Justice. The former volume contains, in French and English, the Charter of the United Nations, the Statute of the Court, Rules of the Court, privileges and immunities, pensions, the Assembly resolution concerning the salary of the Registrar (but the resolution concerning the salaries of judges is not reproduced), conditions under which the Court shall be open to states not parties to the Statute, and the conditions on which Switzerland may become a party to the Statute. An elaborate index to the Statute and Rules fills more than a fourth of the book. The Yearbook, which is "prepared and published by the Registrar and in no way involves the responsibility of the Court," contains ten chapters and 35 pages of annexes. An introductory chapter gives an historical survey of the establishment of the Court. Chapter II reproduces the Statute and Rules. Other chapters describe the Court and Registry, the Court's Jurisdiction, its meetings and decisions, cases before the Court, its publications and finances. Chapter IX supplies an extensive and somewhat complicated bibliography of materials concerning the Court. Chapter X deals with Texts Governing the Jurisdiction of the Court. It is intended to publish a collection of these texts as a volume in Series D. Among those included in the annexes to the Yearbook are the declarations accepting compulsory jurisdiction under the Optional Clause and a list of the states so bound (twenty-five, as of July 15, 1947), with the conditions attached to acceptance by each.

These are authoritative and valuable volumes and, of course, of much use and interest to international lawyers.

CLYDE EAGLETON

Of the Board of Editors

The Control of Alien Property. By Martin Domke. New York: Central Book Company; 1947. Pp. viii, 334. Appendices. Indices. \$7.50. This is a diligently compiled and conveniently arranged five-year cumulative supplement to the author's *Trading with the Enemy in World War II*, which was reviewed in the October, 1943, number of the JOURNAL. The 262 pages of new text are keyed by page and topic references to the 381 pages of the text of the 1943 publication. The appendices, 41 pages as against 160 in the 1943 publication, include the 1946 amendments of the United States Trading with the Enemy Act, the resolution adopted by the Inter-American Conference on Problems of War and Peace of March 7, 1945, with respect to control of enemy property, the law issued by the Allied Control Council for Germany on October 30, 1945, on the vesting and marshalling of German external assets, and Articles 74 to 81 and Annexes XV to XVII of the Treaty of Peace with Italy of February 10, 1947. The five-year supplement will doubtless be welcomed by those who have had occasion to use the original work. It is to be hoped that the author will be able to keep the work up to date with annual pocket supplements.

EDGAR TURLINGTON

Of the Board of Editors

Introduction to the Study of International Organization. By Pitman B. Potter. New York: Appleton-Century-Crofts; 1948 (5th ed.). Pp. xiv, 444. Documents. Index. \$4.50. This leading text in international organization remains faithful to its original character in the new edition but carries further the original design. It remains both the most thorough theoretical analysis of the subject and the treatment most solidly grounded in historical data. At the same time the theoretical exploration of the problem is carried further here than in earlier editions, especially in the field of international administration, and a broad historical survey is introduced in a special chapter devoted to that purpose in place of the scattered references of an historical character contained in previous editions. The work is obviously the product of years of careful thought.

The work is open to two criticisms. It is very concise or condensed and places great responsibility on teacher and student or general reader to supplement the meaty treatment here offered with much reading in other literature and documentary material. It also fails to appraise or attempt to appraise with any completeness the factors of national policy or international politics which may render development of international organization difficult or wreck it completely; at times this gives to the treatment an air of undue optimism. Dean Potter would undoubtedly reply to the first criticism that he definitely intended in the main to provide an introduction and guide to the subject, with extended bibliography, and that any reader seriously interested in the subject would never be content with any one volume however extensive or however high in quality. To the second he would probably reply that no one could be more keenly aware than he of the political difficulties obstructing development of international government, but that this was not his primary problem. It is to be hoped that the author's implicit belief in the continued fruitful evolution of international federation will be borne out by events.

J. P. L.

New York City

Palestine and the United Nations. By Jacob Robinson. Washington: Public Affairs Press; 1947. Index. Pp. 269. The Palestinian question, in its relation to the United Nations, goes back to the San Francisco Conference where the conflict between Arabs and Jews appeared at various points in the discussions of trusteeship and of displaced persons. Dr. Robinson traces this debate, and also the debate in England which led to the calling of a special session of the General Assembly. He discusses the procedural fight over the agenda at that special session, and over the participation of non-governmental bodies. There are three chapters on the Special Committee and its terms of reference, a chapter each on the Arab and Jewish cases (as presented in the debates), and one on the attitudes of Governments. The little book is useful not only as a background for the Palestine question itself before the United Nations, but also with regard to the Charter and procedure of the United Nations. It is written in Dr. Robinson's usual careful and compact style, with references to the appropriate documents.

CLYDE EAGLETON

Of the Board of Editors

The United Nations Primer. By Sigrid Arne. New York: Rinehart; 1948 (rev'd. ed.). Pp. 267. This little volume is useful for the purpose

for which it was written. Miss Arne is a journalist—which is obvious from her constant complaint that newsmen are not given enough information—and she has written for a popular audience. The Primer covers in chronological order the steps in the development from the Atlantic Charter through the first meeting of the General Assembly. For each step there is a descriptive text followed by the document itself or quotations therefrom.

CLYDE EAGLETON

Of the Board of Editors

The Individual, the State, and World Government. By A. C. Ewing. New York: Macmillan; 1947. Pp. viii, 322. Lawyers having made such a failure of the attempt to reorganize the world, it is only right that a philosopher should try his hand. The modesty of the author is one reason for not criticizing his inability to do any better than the lawyers. The world situation is such that the role of ethics and philosophy acquires a special importance today. The problem has grown much greater than that with which the lawyer is familiar but it is surprising to find a philosopher reaching the conclusion that world government is a practical ideal. If the author is to be criticized it is for his readiness to accept the UN Charter as if it were law. He himself admits that the veto power places the Big Five above the law which was not true while international law governed their actions. We are therefore worse off now than we were in the earlier part of the century. We must attribute this to the predominance of uplifters who did not know the subject with which they were dealing.

EDWIN BORCHARD

Of the Board of Editors

Documents of International Organizations. A Selected Bibliography. Vol. I, No. 1. By the Staff of the World Peace Foundation. Boston: World Peace Foundation; 1947. Pp. xvi, 84. \$.75 a copy, \$2.50 a year (quarterly). In view of the volume of documentation now issuing from the increasing international organizations of the time, students of these matters will be very grateful for this expert guide, prepared with all the experience in this field of the World Peace Foundation staff. The documents are classified under six headings: United Nations; Specialized Agencies; League of Nations; Regional Organizations; War and Transitional Organizations; and Other Functional Organizations. An Introductory Note discusses classification and availability of the documents.

J. P. L.

New York City

Die Satzung der Vereinten Nationen und das Statut des Internationalen Gerichtshofes. Translation and Introduction by Stephan Verosta. Vienna: Oesterreichische Staatsdruckerei; 1947. Pp. 67. The first German translation of the Charter of the United Nations and of the Statute of the International Court of Justice was made by Professor Hans Wehberg and published in the *Friedenswarte*. In Germany the first translation by Professor Walter Schätzel of the University of Mainz will soon be published. The pamphlet under review is a German translation, made by S. Verosta, who is an official of the Austrian Ministry of Foreign Affairs and an assistant professor of international law at the Vienna University Law School,

who also has written a short introduction. The translation is done with great care and will, after Austria's admission into the UN, become the official Austrian translation, and, therefore, for the time being, the official translation in the German language.

JOSEF L. KUNZ

Of the Board of Editors

A Dictionary of International Affairs. By A. M. Hyamson. Washington: Public Affairs Press; 1947. Pp. 353. \$3.75. This handy reference book, reprinted from the British edition of the same title, gives generally accurate and often very substantial information on practically all aspects of the broad field of international relations. The style is concise and readable, and the treatment calm and objective. In places the selection of items seems tuned to particularly British interests but that fact may actually be of value for American students brought up on a purely domestic diet.

One may wonder why Sweden was omitted and Pomerania included. "Papua" occupies about as much space as the "Permanent Court of International Justice" and the International Court of Justice (not listed separately) put together. The description of "Pan-Americanism" as "The idea of a political union between all the states of North and South America" is hardly acceptable. The statement that the vote in the "Saarland" was "largely the result of terrorization" is much too strong to be correct. The "Plebiscite" in that area was held in 1935, not in 1933. Naturally anyone might differ with the Editor as to the relative amount of space allotted to various topics; few people would agree on such a point. The few flaws mentioned can easily be eliminated in later editions of this valuable and welcome work for which there is sure to be a continued demand.

JOHN BROWN MASON

Oberlin College

President Roosevelt and the Coming of the War 1941, A Study in Appearances and Realities. By Charles A. Beard. New Haven: Yale University Press; 1948. Pp. 614. The author, the leading historian of America, has written the sequel to his former book on the making of American foreign policy in the period 1932-1940. The present work deals primarily with 1941 alone. Part I is devoted to the appearances and Parts II and III to the realities. His principal source material is the evidence produced before the Congressional Pearl Harbor Investigating Committee. In addition to his work as a historian, the author displays his capacities as a detective and advocate. He punctures the official saga of Pearl Harbor beyond repair, disclosing the fact that the head of the Administration worked for American entrance into the war while assuring the people that he was an advocate of peace. The President's breakdown of the neutrality act should never be forgotten. The effort to pin the responsibility on Admiral Kimmel and General Short was nothing less than dastardly. The Lend-Lease Act of March, 1941, receives major attention.

Mr. Beard reviews the evidence in connection with the American war against Japan and comes to some startling conclusions. Manifestly he had no bias against the President. He is, for the author, an objective person, but his conclusion that Mr. Roosevelt invited the attack on Pearl Harbor is irrefutable. The inability to repel the attack shows the ineptitude of the

man. We shall probably have much of this literature, for it is as necessary as is the truth. The United States, if it is to live, must get over the habit of pulling out the chestnuts for other people.

It is striking that our leading historian and our leading international lawyer, John Bassett Moore, both have reached in independent study the same conclusion as to the ineptitude of the Administration. In President Roosevelt's case the author is even harsher in his judgments but he makes no assertions without a mass of evidence in support. The book sustains the thesis of Morgenstern and makes it harder still to refute the evidence. American citizens cannot be exactly happy about this disclosure but it has to be made in the interests of historical verity. Every citizen should make himself familiar with the story, without becoming thereby necessarily a cynic on government. It must always be remembered that a special type of mind governed the United States during the period in question. The reputation of the author is the best guarantee as to the accuracy of the work. He indulges in little interpretation, permitting the evidence to speak for itself.

The last chapter, concerning the services that Roosevelt and Hull rendered the nation, must be read to be appreciated. The work originally had another final chapter which reviewed President Roosevelt's contribution to the American scene. We hope that it may some day be published as well.

EDWIN BORCHARD

Of the Board of Editors

American Foreign Policy. By Lawrence H. Chamberlain and Richard C. Snyder. New York: Rinehart; 1948. Pp. vi, 826. Index. \$5.00. Approaching the foreign policy of the United States from the standpoint of political science rather than history, the authors of *American Foreign Policy* have pieced together from reliable sources an excellent collection of readings which should be of interest not only to university professors for instructional purposes but also to all intelligent American citizens who are interested in understanding the factors which influence contemporary American foreign policy.

Doing for the specific field of American foreign policy what Professor Norman J. Padelford is doing for international affairs as a whole with his *Current Readings on International Relations*,¹ Professors Chamberlain and Snyder have attempted with some success to integrate a considerable amount of hitherto fragmentary and scattered material bearing on American foreign policy, with the result that in a single volume it is now possible to read a number of outstanding short articles by a wide variety of authoritative writers on foreign policy.

Although the authors have presented a well-balanced set of readings and have also gone beyond this to write short readable summaries to fill gaps where existing materials are unsatisfactory on account of length or organization, they point out with candor that their "book does not pretend to include all pertinent materials," but that "the editorial observations, the documents, the descriptive and interpretive comments" included will only "serve as a foundation for a general introduction to American foreign policy."

¹ Norman J. Padelford, *Current Readings on International Relations*, No. 1 (February, 1947), No. 2 (June, 1947), No. 3 (January, 1948), No. 4 (June, 1948).

American Foreign Policy has been organized by its authors into two parts, the first being procedural in nature while the second is substantive. Part I deals with the relationship of various branches or agencies of the government to foreign policy and with the influence of public opinion as expressed through political parties and pressure groups upon foreign policy. Part II emphasizes current American foreign policy, covering such functional topics as atomic energy, economics, finance, Great Power relations, and the United Nations, as well as such regional topics as Europe, the Middle East, the Far East, and the Western Hemisphere.

Well-known scholars and writers from whose articles, books, or speeches material has been selected for use in *American Foreign Policy* include Quincy Wright, Edward Corwin, Harold Zink, Grayson Kirk, Jacob Viner, Harold Laski, Kenneth Colgrove, Vera Micheles Dean, Blair Bolles, James Reston, Hanson Baldwin, and Arthur Krock. Governmental leaders and representatives quoted include Harry Truman, George Marshall, James Byrnes, Charles Evans Hughes, George Sutherland, Robert Jackson, Warren Austin, Herschel Johnson, Loy Henderson, John Hilldring, Francis Wilcox, and Francis Sayre.

The sources most widely used by the authors in selecting readings were the Foreign Policy Association publications, the *Department of State Bulletin*, Congressional publications, United Nations documents, and *The New York Times*. Material was also taken from this JOURNAL, the *American Political Science Review*, the *Proceedings of the Academy of Political Science*, the *Annals of the American Academy of Political and Social Science*, the *Yale Review*, and the *Public Opinion Quarterly*.

ROBERT E. ELDER

Colgate University

Russia in Flux. By Sir John Maynard. New York: Macmillan; 1948. Pp. xviii, 564. Foreword. Appendix. Index. \$6.50. Edited and abridged by S. Haden Guest from *Russia in Flux* and *The Russian Peasant and Other Studies*, originally published in 1941 and 1942, this highly recommended book by Sir Bernard Pares does not exactly measure up to the praises heaped upon it, although it belongs to the flood of better books on Russia on the market today. The first part charts the main currents of Russian thought up to the October 1917 revolution while the second part concentrates mainly on the peasant problem and questions of urban labor, religion, minorities, and the 1936 constitution. Many statements and interpretations show that the treatment is already outdated in view of the recent events. But since there is still a dearth of basic volumes on Russia's history, the book will serve until the advent of a more systematized and well-documented study of this field.

JOSEPH S. ROUCEK

Bridgeport University

Poland, Russia, and Great Britain, 1941-1945. By R. Umiastowski. London: Hollis & Carter; 1946. Pp. 544. Appendix. Index. 25/-. This carefully documented study is a valuable addition to the recent "revelations" of the World War II deals made by the United States and Great Britain in order to secure Stalin's collaboration to defeat Hitler. It analyzes the development of Polish-Russian relations on the outskirts of the Anglo-American-Soviet alliance, and the fluctuations of these relations according to the changes of the situation on the Russo-German front. It

describes the factors which led to the increase of the Russian pressure on the Allied Governments regarding territorial demands at Poland's expense, the establishment of the underground state in Poland, the fight of its army against the invaders, and the exploits of the Polish Army on the battle fronts of the Allies. Especially valuable are the sections giving a factual account of the Soviet activities, how the Kremlin tried to gain control over the Polish Government and how finally a rival one was set up which eventually was installed in the "liberated" country as the "Lublin Committee." The treatment closes on the tragedy of the Warsaw rising and the subsequent annihilation of the Polish Home Army; the final chapter embraces the Crimean agreement and all that it implied.

The book deserves to be known to all American historians who have, for some strange reasons, failed to notice it at all. Carefully documented, the evidence shows all the sordidness of World War II secret deals. Only occasionally do the author's feelings betray him and weaken his case which is overwhelming enough in its indictment.

JOSEPH S. ROUCEK

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TREATY OF PEACE WITH BULGARIA, 1947

The Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Australia, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Greece, India, New Zealand, the Ukrainian Soviet Socialist Republic, the Union of South Africa and the People's Federal Republic of Yugoslavia, as the States which are at war with Bulgaria and actively waged war against the European enemy states with substantial military forces, hereinafter referred to as "the Allied and Associated Powers," of the one part,
and Bulgaria, of the other part;

Whereas Bulgaria, having become an ally of Hitlerite Germany and having participated on her side in the war against the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and other United Nations, bears her share of responsibility for this war;

Whereas, however, Bulgaria having ceased military operations against the United Nations, broke off relations with Germany, and, having concluded on October 28, 1944, an Armistice with the Governments of the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, acting on behalf of all the United Nations at war with Bulgaria, took an active part in the war against Germany; and

Whereas the Allied and Associated Powers and Bulgaria are desirous of concluding a treaty of peace, which, conforming to the principles of justice, will settle questions still outstanding as a result of the events hereinbefore recited and form the basis of friendly relations between them, thereby enabling the Allied and Associated Powers to support Bulgaria's application to become a member of the United Nations and also to adhere to any Convention concluded under the auspices of the United Nations;

Have therefore agreed to declare the cessation of the state of war and for this purpose to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

PART I

FRONTIERS OF BULGARIA

Article 1

The frontiers of Bulgaria, as shown on the map annexed to the present Treaty (Annex I), shall be those which existed on January 1, 1941.

PART II

POLITICAL CLAUSES

SECTION I

Article 2

Bulgaria shall take all measures necessary to secure to all persons under Bulgarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

Article 3

Bulgaria, which in accordance with the Armistice Agreement has taken measures to set free, irrespective of citizenship and nationality, all persons held in confinement on account of their activities in favour of, or because of their sympathies with, the United Nations or because of their racial origin, and to repel discriminatory legislation and restrictions imposed thereunder, shall complete these measures and shall in future not take any measures or enact any laws which would be incompatible with the purposes set forth in this Article.

Article 4

Bulgaria, which in accordance with the Armistice Agreement has taken measures for dissolving all organisations of a Fascist type on Bulgarian territory, whether political, military or para-military, as well as other organisations conducting propaganda hostile to the United Nations, shall not permit in future the existence and activities of organisations of that nature which have as their aim denial to the people of their democratic rights.

Article 5

1. Bulgaria shall take all necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity;

(b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.

2. At the request of the United Nations Government concerned, Bulgaria shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Heads of the Diplomatic Missions in Sofia of the Soviet Union, the United Kingdom and the United States of America, who will reach agreement with regard to the difficulty.

SECTION II

Article 6

Bulgaria undertakes to recognize the full force of the Treaties of Peace with Italy, Roumania, Hungary and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace.

Article 7

Bulgaria undertakes to accept any arrangements which have been or may be agreed for the liquidation of the League of Nations and the Permanent Court of International Justice.

Article 8

1. Each Allied or Associated Power will notify Bulgaria, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Bulgaria it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.

2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

3. All such treaties not so notified shall be regarded as abrogated.

PART III

MILITARY, NAVAL AND AIR CLAUSES

SECTION I

Article 9

The maintenance of land, sea and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Bulgaria is authorised to have armed forces consisting of not more than:

(a) A land army, including frontier troops, with a total strength of 55,000 personnel;

- (b) Anti-aircraft artillery with a strength of 1,800 personnel;
- (c) A navy with a personnel strength of 3,500 and a total tonnage of 7,250 tons;
- (d) An air force, including any naval air arm, of 90 aircraft, including reserves, of which not more than 70 may be combat types of aircraft, with a total personnel strength of 5,200. Bulgaria shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

These strengths shall in each case include combat, service and overhead personnel.

Article 10

The personnel of the Bulgarian Army, Navy and Air Force in excess of the respective strengths permitted under Article 9 shall be disbanded within six months from the coming into force of the present Treaty.

Article 11

Personnel not included in the Bulgarian Army, Navy or Air Force shall not receive any form of military training, naval training or military air training as defined in Annex II.

Article 12

1. The following construction to the north of the Greco-Bulgarian frontier is prohibited: permanent fortifications where weapons capable of firing into Greek territory can be emplaced; permanent military installations capable of being used to conduct or direct fire into Greek territory; and permanent supply and storage facilities emplaced solely for the use of the said fortifications and installations.

2. This prohibition does not include other types of non-permanent fortifications or surface accommodations and installations which are designed to meet only requirements of an internal character and of local defence of the frontiers.

Article 13

Bulgaria shall not possess, construct or experiment with an atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo-launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialised types of assault craft.

Article 14

Bulgaria shall not retain, produce or otherwise acquire, or maintain facilities for the manufacture of, war material in excess of that required for the maintenance of the armed forces permitted under Article 9 of the present Treaty.

Article 15

1. Excess war material of Allied origin shall be placed at the disposal of the Allied or Associated Power concerned according to the instructions given by that Power. Excess Bulgarian war material shall be placed at the disposal of the Governments of the Soviet Union, the United Kingdom and the United States of America. Bulgaria shall renounce all rights to this material.

2. War material of German origin or design in excess of that required for the armed forces permitted under the present Treaty shall be placed at the disposal of the Three Governments. Bulgaria shall not acquire or manufacture any war material of German origin or design, or employ or train any technicians, including military and civil aviation personnel, who are or have been nationals of Germany.

3. Excess war material mentioned in paragraphs 1 and 2 of this Article shall be handed over or destroyed within one year from the coming into force of the present Treaty.

4. A definition and list of war material for the purposes of the present Treaty are contained in Annex III.

Article 16

Bulgaria shall co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany may not be able to take steps outside German territory towards rearmament.

Article 17

Bulgaria shall not acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

Article 18

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Bulgaria or, after Bulgaria becomes a member of the United Nations, by agreement between the Security Council and Bulgaria.

SECTION II

Article 19

1. Bulgarian prisoners of war shall be repatriated as soon as possible, in accordance with arrangements agreed upon by the individual Powers detaining them and Bulgaria.

2. All costs, including maintenance costs, incurred in moving Bulgarian prisoners of war from their respective assembly points, as chosen by the Government of the Allied or Associated Power concerned, to the point of their entry into Bulgarian territory, shall be borne by the Bulgarian Government.

PART IV

WITHDRAWAL OF ALLIED FORCES

Article 20

1. All armed forces of the Allied and Associated Powers shall be withdrawn from Bulgaria as soon as possible and in any case not later than 90 days from the coming into force of the present Treaty.

2. All unused Bulgarian currency and all Bulgarian goods in possession of the Allied forces in Bulgaria, acquired pursuant to Article 15 of the Armistice Agreement, shall be returned to the Bulgarian Government within the same period of 90 days.

3. Bulgaria shall, however, provide, during the period between the coming into force of the present Treaty and the final withdrawal of Allied forces, all such supplies and facilities as may be specifically required for the forces of the Allied and Associated Powers which are being withdrawn, and due compensation shall be paid to the Bulgarian Government for such supplies and facilities.

PART V

REPARATION AND RESTITUTION

Article 21

1. Losses caused to Yugoslavia and Greece by military operations and by the occupation by Bulgaria of the territory of those States shall be made good by Bulgaria to Yugoslavia and Greece, but, taking into consideration that Bulgaria has not only withdrawn from the war against the United Nations, but has declared and, in fact, waged war against Germany, the Parties agree that compensation for the above losses will be made by Bulgaria not in full but only in part, namely in the amount of \$70,000,000 payable in kind from the products of manufacturing and extractive industries and agriculture over eight years beginning from the coming into force of the present Treaty. The sum to be paid to Greece shall amount to

\$45,000,000 and the sum to be paid to Yugoslavia shall amount to \$25,000,000.

2. The quantities and categories of goods to be delivered shall be determined by agreements to be concluded by the Governments of Greece and Yugoslavia with the Government of Bulgaria. These agreements shall be communicated to the Heads of the Diplomatic Missions in Sofia of the Soviet Union, the United Kingdom and the United States of America.

3. The basis of calculation for the settlement provided in this Article will be the United States dollar at its gold parity on July 1, 1946, i.e. \$35 for one ounce of gold.

4. The basis of valuation of goods delivered under this Article shall be the 1938 international market prices in United States dollars, with an increase of fifteen per cent for industrial products and ten per cent for other products. The cost of transport to the Greek or Yugoslav frontier shall be chargeable to the Bulgarian Government.

Article 22

1. Bulgaria accepts the principles of the United Nations Declaration of January 5, 1943, and shall return, in the shortest possible time, property removed from the territory of any of the United Nations.

2. The obligation to make restitution applies to all identifiable property at present in Bulgaria which was removed by force or duress by any of the Axis Powers from the territory of any of the United Nations, irrespective of any subsequent transactions by which the present holder of any such property has secured possession.

3. If, in particular cases, it is impossible for Bulgaria to make restitution of objects of artistic, historic or archaeological value, belonging to the cultural heritage of the United Nation from whose territory such objects were removed by force or duress by Bulgarian forces, authorities or nationals, Bulgaria shall transfer to the United Nation concerned objects of the same kind as, and of approximately equivalent value to, the objects removed, in so far as such objects are obtainable in Bulgaria.

4. The Bulgarian Government shall return the property referred to in this Article in good order and, in this connection, shall bear all costs in Bulgaria relating to labour, materials and transport.

5. The Bulgarian Government shall co-operate with the United Nations in, and shall provide at its own expense all necessary facilities for, the search for and restitution of property liable to restitution under this Article.

6. The Bulgarian Government shall take the necessary measures to effect the return of property covered by this Article held in any third country by persons subject to Bulgarian jurisdiction.

7. Claims for the restitution of property shall be presented to the Bulgarian Government by the Government of the country from whose terri-

tory the property was removed, it being understood that rolling stock shall be regarded as having been removed from the territory to which it originally belonged. The period during which such claims may be presented shall be six months from the coming into force of the present Treaty.

8. The burden of identifying the property and of proving ownership shall rest on the claimant Government, and the burden of proving that the property was not removed by force or duress shall rest on the Bulgarian Government.

PART VI

ECONOMIC CLAUSES

Article 23

1. In so far as Bulgaria has not already done so, Bulgaria shall restore all legal rights and interests in Bulgaria of the United Nations and their nationals as they existed on April 24, 1941, and shall return all property in Bulgaria of the United Nations and their nationals as it now exists.

2. The Bulgarian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Bulgarian Government in connection with their return. The Bulgarian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between April 24, 1941, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Bulgarian authorities not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Bulgarian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

4. (a) The Bulgarian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Bulgaria, he shall receive from the Bulgarian Government compensation in levas to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Bulgarian nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 8(a) of this Article, but which have suffered a loss by reason of injury or damage to property in Bulgaria, shall receive compensation in accordance with sub-paragraph (a) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Bulgaria but shall be subject to the foreign exchange control regulations which may be in force in Bulgaria from time to time.

(d) The Bulgarian Government shall accord to United Nations nationals the same treatment in the allocation of materials for the repair or rehabilitation of their property in Bulgaria and in the allocation of foreign exchange for the importation of such materials as applies to Bulgarian nationals.

(e) The Bulgarian Government shall grant United Nations nationals an indemnity in levas at the same rate as provided in sub-paragraph (a) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Bulgarian property. This sub-paragraph does not apply to a loss of profit.

5. All reasonable expenses incurred in Bulgaria in establishing claims, including the assessment of loss or damage, shall be borne by the Bulgarian Government.

6. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Bulgaria by the Bulgarian Government or any Bulgarian authority between the date of the Armistice and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

7. The owner of the property concerned and the Bulgarian Government may agree upon arrangements in lieu of the provisions of this Article.

8. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Bulgaria.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Bulgaria during the war, have been treated as enemy;

(b) "Owner" means the United Nations national, as defined in sub-paragraph (a) above, who is entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nations national as defined in sub-paragraph (a). If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property.

Article 24

Bulgaria recognizes that the Soviet Union is entitled to all German assets in Bulgaria transferred to the Soviet Union by the Control Council for Germany and undertakes to take all necessary measures to facilitate such transfers.

Article 25

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Bulgaria or to Bulgarian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Bulgaria or Bulgarian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Bulgarian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.

2. The liquidation and disposition of Bulgarian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Bulgarian owner shall have no rights with respect to such property except those which may be given him by that law.

3. The Bulgarian Government undertakes to compensate Bulgarian nationals whose property is taken under this Article and not returned to them.

4. No obligation is created by this Article on any Allied or Associated Power to return industrial property to the Bulgarian Government or Bulgarian nationals, or to include such property in determining the amounts which may be retained under paragraph 1 of this Article. The Government of each of the Allied and Associated Powers shall have the right to

impose such limitations, conditions and restrictions on rights or interests with respect to industrial property in the territory of that Allied or Associated Power, acquired prior to the coming into force of the present Treaty by the Government or nationals of Bulgaria, as may be deemed by the Government of the Allied or Associated Power to be necessary in the national interest.

5. The property covered by paragraph 1 of this Article shall be deemed to include Bulgarian property which has been subject to control by reason of a state of war existing between Bulgaria and the Allied or Associated Power having jurisdiction over the property, but shall not include:

(a) Property of the Bulgarian Government used for consular or diplomatic purposes;

(b) Property belonging to religious bodies or private charitable institutions and used for religious or charitable purposes;

(c) Property of natural persons who are Bulgarian nationals permitted to reside within the territory of the country in which the property is located or to reside elsewhere in United Nations territory, other than Bulgarian property which at any time during the war was subjected to measures not generally applicable to the property of Bulgarian nationals resident in the same territory;

(d) Property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and Bulgaria, or arising out of transactions between the Government of any Allied or Associated Power and Bulgaria since October 28, 1944;

(e) Literary and artistic property rights.

Article 26

1. From the coming into force of the present Treaty, property in Germany of Bulgaria and of Bulgarian nationals shall no longer be treated as enemy property and all restrictions based on such treatment shall be removed.

2. Identifiable property of Bulgaria and of Bulgarian nationals removed by force or duress from Bulgarian territory to Germany by German forces or authorities after October 28, 1944, shall be eligible for restitution.

3. The restoration and restitution of Bulgarian property in Germany shall be effected in accordance with measures which will be determined by the Powers in occupation of Germany.

4. Without prejudice to these and to any other dispositions in favor of Bulgaria and Bulgarian nationals by the Powers occupying Germany, Bulgaria waives on its own behalf and on behalf of Bulgarian nationals all claims against Germany and German nationals outstanding on May 8, 1945, except those arising out of contracts and other obligations entered into, and rights acquired, before September 1, 1939. This waiver shall be

deemed to include debts, all inter-governmental claims in respect of arrangements entered into in the course of the war and all claims for loss or damage arising during the war.

Article 27

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present Treaty, and which are due by the Government or nationals of Bulgaria to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Bulgaria.

2. Except as otherwise expressly provided in the present Treaty, nothing therein shall be construed as impairing debtor-creditor relationships arising out of pre-war contracts concluded either by the Government or nationals of Bulgaria.

Article 28

1. Bulgaria waives all claims of any description against the Allied and Associated Powers on behalf of the Bulgarian Government or Bulgarian nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Bulgaria at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations or actions of forces or authorities of Allied or Associated Powers in Bulgarian territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Bulgaria agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Bulgarian ships or Bulgarian goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Bulgarian Government agrees to make equitable compensation in levas to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Bulgarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Bulgarian territory.

3. Bulgaria likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Bulgarian Government or Bulgarian nationals against any of the United Nations whose diplomatic relations with Bulgaria were broken off during the war and which took action in coöperation with the Allied and Associated Powers.

4. The waiver of claims by Bulgaria under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Bulgarian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

Article 29

1. Pending the conclusion of commercial treaties or agreements between individual United Nations and Bulgaria, the Bulgarian Government shall, during a period of eighteen months from the coming into force of the present Treaty, grant the following treatment to each of the United Nations which, in fact, reciprocally grants similar treatment in like matters to Bulgaria:

(a) In all that concerns duties and charges on importation or exportation, the internal taxation of imported goods and all regulations pertaining thereto, the United Nations shall be granted unconditional most-favoured-nation treatment;

(b) In all other respects, Bulgaria shall make no arbitrary discrimination against goods originating in or destined for any territory of any of the United Nations as compared with like goods originating in or destined for territory of any other of the United Nations or of any other foreign country;

(c) United Nations nationals, including juridical persons, shall be granted national and most-favoured-nation treatment in all matters pertaining to commerce, industry, shipping and other forms of business activity within Bulgaria. These provisions shall not apply to commercial aviation;

(d) Bulgaria shall grant no exclusive or discriminatory right to any country with regard to the operation of commercial aircraft in international traffic, shall afford all the United Nations equality of opportunity in obtaining international commercial aviation rights in Bulgarian territory, including the right to land for refueling and repair, and, with regard to the operation of commercial aircraft in international traffic, shall grant on a reciprocal and non-discriminatory basis to all United Nations the right to fly over Bulgarian territory without landing. These provisions shall not affect the interests of the national defence of Bulgaria.

2. The foregoing undertakings by Bulgaria shall be understood to be subject to the exceptions customarily included in commercial treaties con-

cluded by Bulgaria before the war, and the provisions with respect to reciprocity granted by each of the United Nations shall be understood to be subject to the exceptions customarily included in the commercial treaties concluded by that State.

Article 30

Bulgaria shall facilitate as far as possible railway traffic in transit through its territory at reasonable rates and shall negotiate with neighboring States all reciprocal agreements necessary for this purpose.

Article 31

1. Any disputes which may arise in connection with Articles 22 and 23 and Annexes IV, V and VI of the present Treaty shall be referred to a Conciliation Commission composed of an equal number of representatives of the United Nations Government concerned and of the Bulgarian Government. If agreement has not been reached within three months of the dispute having been referred to the Conciliation Commission, either Government may require the addition of a third member to the Commission, and failing agreement between the two Governments on the selection of this member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission and shall be accepted by the parties as definitive and binding.

Article 32

Articles 22, 23, 29 and Annex VI of the present Treaty shall apply to the Allied and Associated Powers and France and to those of the United Nations whose diplomatic relations with Bulgaria have been broken off during the war.

Article 33

The provisions of Annexes IV, V and VI shall, as in the case of the other Annexes, have force and effect as integral parts of the present Treaty.

PART VII

CLAUSE RELATING TO THE DANUBE

Article 34

Navigation on the Danube shall be free and open for the nationals, vessels of commerce, and goods of all States, on a footing of equality in regard to port and navigation charges and conditions for merchant shipping. The foregoing shall not apply to traffic between ports of the same State.

PART VIII

FINAL CLAUSES

Article 35

1. For a period not to exceed eighteen months from the coming into force of the present Treaty, the Heads of the Diplomatic Missions in Sofia of the Soviet Union, the United Kingdom and the United States of America, acting in concert, will represent the Allied and Associated Powers in dealing with the Bulgarian Government in all matters concerning the execution and interpretation of the present Treaty.

2. The Three Heads of Mission will give the Bulgarian Government such guidance, technical advice and clarification as may be necessary to ensure the rapid and efficient execution of the present Treaty both in letter and in spirit.

3. The Bulgarian Government shall afford the said Three Heads of Mission all necessary information and any assistance which they may require in the fulfilment of the tasks devolving on them under the present Treaty.

Article 36

1. Except where another procedure is specifically provided under any Article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the Three Heads of Mission acting under Article 35, except that in this case the Heads of Mission will not be restricted by the time limit provided in that Article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 37

1. Any member of the United Nations, not a signatory to the present Treaty, which is at war with Bulgaria, may accede to the Treaty and upon accession shall be deemed to be an Associated Power for the purposes of the Treaty.

2. Instruments of accession shall be deposited with the Government of the Union of Soviet Socialist Republics and shall take effect upon deposit.

Article 38

The present Treaty, of which the Russian and English texts are authentic, shall be ratified by the Allied and Associated Powers. It shall also be ratified by Bulgaria. It shall come into force immediately upon the deposit of ratifications by the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The instruments of ratification shall, in the shortest time possible, be deposited with the Government of the Union of Soviet Socialist Republics.

With respect to each Allied or Associated Power whose instrument of ratification is thereafter deposited, the Treaty shall come into force upon the date of deposit. The present Treaty shall be deposited in the archives of the Government of the Union of Soviet Socialist Republics, which shall furnish certified copies to each of the signatory States.

LIST OF ANNEXES

- I. Map of Bulgarian Frontiers
- II. Definition of Military, Military Air and Naval Training
- III. Definition and list of war material
- IV. Industrial, Literary and Artistic Property
- V. Contracts, Prescription and Negotiable Instruments
- VI. Judgments

ANNEX I

(See Article 1)

Map of the Bulgarian Frontiers

ANNEX II

(See Article 11)

Definition of Military, Military Air and Naval Training

1. Military training is defined as: the study of and practice in the use of war material specially designed or adapted for army purposes, and training devices relative thereto; the study and carrying out of all drill or movements which teach or practice evolutions performed by fighting forces in battle; and the organised study of tactics, strategy and staff work.
2. Military air training is defined as: the study of and practice in the

use of war material specially designed or adapted for air force purposes, and training devices relative thereto; the study and practice of all specialised evolutions, including formation flying, performed by aircraft in the accomplishment of an air force mission; and the organised study of air tactics, strategy and staff work.

3. Naval training is defined as: the study, administration or practice in the use of warships or naval establishments as well as the study or employment of all apparatus and training devices relative thereto, which are used in the prosecution of naval warfare, except for those which are also normally used for civilian purposes; also the teaching, practice or organised study of naval tactics, strategy and staff work including the execution of all operations and manoeuvres not required in the peaceful employment of ships.

ANNEX III

(See Article 15)

Definition and List of War Material

The term "war material" as used in the present Treaty shall include all arms, ammunition and implements specially designed or adapted for use in war as listed below.

The Allied and Associated Powers reserve the right to amend the list periodically by modification or addition in the light of subsequent scientific development.

Category I

1. Military rifles, carbines, revolvers and pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use.

2. Machine guns, military automatic or autoloading rifles, and machine pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use; machine gun mounts.

3. Guns, howitzers, mortars, cannon special to aircraft; breechless or recoil-less guns and flamethrowers; barrels and other spare parts not readily adaptable for civilian use; carriages and mountings for the foregoing.

4. Rocket projectors; launching and control mechanisms for self-propelling and guided missiles; mountings for same.

5. Self-propelling and guided missiles, projectiles, rockets, fixed ammunition and cartridges, filled or unfilled, for the arms listed in sub-paragraphs 1-4 above and fuses, tubes or contrivances to explode or operate them. Fuses required for civilian use are not included.

6. Grenades, bombs, torpedoes, mines, depth charges and incendiary material or charges, filled or unfilled; all means for exploding or operating them. Fuses required for civilian use are not included.

7. Bayonets.

Category II

1. Armoured fighting vehicles; armoured trains, not technically convertible to civilian use.
2. Mechanical and self propelled carriages for any of the weapons listed in Category I; special type military chassis or bodies other than those enumerated in sub-paragraph 1 above.
3. Armour plate, greater than three inches in thickness, used for protective purposes in warfare.

Category III

1. Aiming and computing devices, including predictors and plotting apparatus, for fire control; direction of fire instruments; gun sights; bomb sights; fuse setters; equipment for the calibration of guns and fire control instruments.
2. Assault bridging, assault boats and storm boats.
3. Deceptive warfare, dazzle and decoy devices.
4. Personal war equipment of a specialised nature not readily adaptable to civilian use.

Category IV

1. Warships of all kinds, including converted vessels and craft designed or intended for their attendance or support, which cannot be technically reconverted to civilian use, as well as weapons, armour, ammunition, aircraft and all other equipment, material, machines and installations not used in peace time on ships other than warships.
2. Landing craft and amphibious vehicles or equipment of any kind; assault boats or devices of any type as well as catapults or other apparatus for launching or throwing aircraft, rockets, propelled weapons or any other missile, instrument or device whether manned or unmanned, guided or uncontrolled.
3. Submersible or semi-submersible ships, craft, weapons, devices or apparatus of any kind, including specially designed harbour defence booms, except as required by salvage, rescue or other civilian uses, as well as all equipment, accessories, spare parts, experimental or training aids, instruments or installations as may be specially designed for the construction, testing, maintenance or housing of the same.

Category V

1. Aircraft, assembled or unassembled, both heavier and lighter than air, which are designed or adapted for aerial combat by the use of machine guns, rocket projectors or artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of their design or construction are prepared for, any of the appliances referred to in sub-paragraph 2 below.

2. Aerial gun mounts and frames, bomb racks, torpedo carriers and bomb release or torpedo release mechanisms; gun turrets and blisters.
3. Equipment specially designed for and used solely by airborne troops.
4. Catapults or launching apparatus for ship-borne, land- or sea-based aircraft; apparatus for launching aircraft weapons.
5. Barrage balloons.

Category VI

Asphyxiating, lethal, toxic or incapacitating substances intended for war purposes, or manufactured in excess of civilian requirements.

Category VII

Propellants, explosives, pyrotechnics or liquefied gases destined for the propulsion, explosion, charging or filling of, or for use in connection with, the war material in the present categories, not capable of civilian use or manufactured in excess of civilian requirements.

Category VIII

Factory and tool equipment specially designed for the production and maintenance of the material enumerated above and not technically convertible to civilian use.

ANNEX IV

Industrial, Literary and Artistic Property

1. (a) A period of one year from the coming into force of the present Treaty shall be accorded to the Allied and Associated Powers and their nationals without extension fees or other penalty of any sort in order to enable them to accomplish all necessary acts for the obtaining or preserving in Bulgaria of rights in industrial, literary and artistic property which were not capable of accomplishment owing to the existence of a state of war.

(b) Allied and Associated Powers or their nationals who had duly applied in the territory of any Allied or Associated Power for a patent or registration of a utility model not earlier than twelve months before the outbreak of the war with Bulgaria or during the war, or for the registration of an industrial design or model or trade mark not earlier than six months before the outbreak of the war with Bulgaria or during the war, shall be entitled within twelve months after the coming into force of the present Treaty to apply for corresponding rights in Bulgaria, with a right of priority based upon the previous filing of the application in the territory of that Allied or Associated Power.

(c) Each of the Allied and Associated Powers and its nationals shall be accorded a period of one year from the coming into force of the present

Treaty during which they may institute proceedings in Bulgaria against those natural or juridical persons who are alleged illegally to have infringed their rights in industrial, literary or artistic property between the date of the outbreak of the war and the coming into force of the Treaty.

2. A period from the outbreak of the war until a date eighteen months after the coming into force of the present Treaty shall be excluded in determining the time within which a patent must be worked or a design or trade mark used.

3. The period from the outbreak of the war until the coming into force of the present Treaty shall be excluded from the normal term of rights in industrial, literary and artistic property which were in force in Bulgaria at the outbreak of the war or which are recognized or established under this Annex and belong to any of the Allied and Associated Powers or their nationals. Consequently, the normal duration of such rights shall be deemed to be automatically extended in Bulgaria for a further term corresponding to the period so excluded.

4. The foregoing provisions concerning the rights in Bulgaria of the Allied and Associated Powers and their nationals shall apply equally to the rights in the territories of the Allied and Associated Powers of Bulgaria and its nationals. Nothing, however, in these provisions shall entitle Bulgaria or its nationals to more favorable treatment in the territory of any of the Allied and Associated Powers than is accorded by such Power in like cases to other United Nations or their nationals, nor shall Bulgaria be thereby required to accord to any of the Allied and Associated Powers or its nationals more favorable treatment than Bulgaria or its nationals receive in the territory of such Power in regard to the matters dealt with in the foregoing provisions.

5. Third parties in the territories of any of the Allied and Associated Powers or Bulgaria who, before the coming into force of the present Treaty, had bona fide acquired industrial, literary or artistic property rights conflicting with rights restored under this Annex or with rights obtained with the priority provided thereunder, or had bona fide manufactured, published, reproduced, used or sold the subject matter of such rights, shall be permitted, without any liability for infringement, to continue to exercise such rights and to continue or to resume such manufacture, publication, reproduction, use or sale which had been bona fide acquired or commenced. In Bulgaria, such permission shall take the form of a non-exclusive licence granted on terms and conditions to be mutually agreed by the parties thereto or, in default of agreement, to be fixed by the Conciliation Commission established under Article 31 of the present Treaty. In the territories of each of the Allied and Associated Powers, however, bona fide third parties shall receive such protection as is accorded under similar circumstances to bona fide third parties whose rights are in conflict with those of the nationals of other Allied and Associated Powers.

6. Nothing in this Annex shall be construed to entitle Bulgaria or its national to any patent or utility model rights in the territory of any of the Allied and Associated Powers with respect to inventions, relating to any article listed by name in Annex III of the present Treaty, made, or upon which applications were filed, by Bulgaria, or any of its nationals, in Bulgaria or in the territory of any other of the Axis Powers, or in any territory occupied by the Axis forces, during the time when such territory was under the control of the forces or authorities of the Axis Powers.

7. Bulgaria shall likewise extend the benefits of the foregoing provisions of this Annex to France, and to other United Nations which are not Allied or Associated Powers, whose diplomatic relations with Bulgaria have been broken off during the war and which undertake to extend to Bulgaria the benefits accorded to Bulgaria under the said provisions.

8. Nothing in this Annex shall be understood to conflict with Articles 23, 25 and 27 of the present Treaty.

ANNEX V

Contracts, Prescription and Negotiable Instruments

A. CONTRACTS

1. Any contract which required for its execution intercourse between any of the parties thereto having become enemies as defined in part D of this Annex, shall, subject to the exceptions set out in paragraphs 2 and 3 below, be deemed to have been dissolved as from the time when any of the parties thereto became enemies. Such dissolution, however, is without prejudice to the provisions of Article 27 of the present Treaty, nor shall it relieve any party to the contract from the obligation to repay amounts received as advances or as payments on account and in respect of which such party has not rendered performance in return.

2. Notwithstanding the provisions of paragraph 1 above, there shall be excepted from dissolution and, without prejudice to the rights contained in Article 25 of the present Treaty, there shall remain in force such parts of any contract as are severable and did not require for their execution intercourse between any of the parties thereto, having become enemies as defined in part D of this Annex. Where the provisions of any contract are not so severable, the contract shall be deemed to have been dissolved in its entirety. The foregoing shall be subject to the application of domestic laws, orders or regulations made by any of the Allied and Associated Powers having jurisdiction over the contract or over any of the parties thereto and shall be subject to the terms of the contract.

3. Nothing in part A of this Annex shall be deemed to invalidate transactions lawfully carried out in accordance with a contract between enemies

if they have been carried out with the authorization of the Government of one of the Allied and Associated Powers.

4. Notwithstanding the foregoing provisions, contracts of insurance and re-insurance shall be subject to separate agreements between the Government of the Allied or Associated Power concerned and the Government of Bulgaria.

B. PERIODS OF PRESCRIPTION

1. All periods of prescription or limitation of right of action or of the right to take conservatory measures in respect of relations affecting persons or property, involving United Nations nationals and Bulgarian nationals who, by reason of the state of war, were unable to take judicial action or to comply with the formalities necessary to safeguard their rights, irrespective of whether these periods commenced before or after the outbreak of war, shall be regarded as having been suspended, for the duration of the war, in Bulgarian territory on the one hand, and on the other hand in the territory of those United Nations which grant to Bulgaria, on a reciprocal basis, the benefit of the provisions of this paragraph. These periods shall begin to run again on the coming into force of the present Treaty. The provisions of this paragraph shall be applicable in regard to the periods fixed for the presentation of interest or dividend coupons or for the presentation for payment of securities drawn for repayment or repayable on any other ground.

2. Where, on account of failure to perform any act or to comply with any formality during the war, measures of execution have been taken in Bulgarian territory to the prejudice of a national of one of the United Nations, the Bulgarian Government shall restore the rights which have been detrimentally affected. If such restoration is impossible or would be inequitable, the Bulgarian Government shall provide that the United Nations national shall be afforded such relief as may be just and equitable in the circumstances.

C. NEGOTIABLE INSTRUMENTS

1. As between enemies, no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment, or to give notice of non-acceptance or non-payment to drawers or endorsers, or to protest the instrument, nor by reason of failure to complete any formality during the war.

2. Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or

endorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment, or protest may be made.

3. If a person has, either before or during the war, incurred obligations under a negotiable instrument in consequence of an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of these obligations, notwithstanding the outbreak of war.

D. SPECIAL PROVISIONS

1. For the purposes of this Annex, natural or juridical persons shall be regarded as enemies from the date when trading between them shall have become unlawful under laws, orders or regulations to which such persons or the contracts were subject.

2. Having regard to the legal system of the United States of America, the provisions of this Annex shall not apply as between the United States of America and Bulgaria.

ANNEX VI

Judgments

The Bulgarian Government shall take the necessary measures to enable nationals of any of the United Nations at any time within one year from the coming into force of the present Treaty to submit to the appropriate Bulgarian authorities for review any judgment given by a Bulgarian court between April 24, 1941, and the coming into force of the present Treaty in any proceeding in which the United Nations national was unable to make adequate presentation of his case either as plaintiff or defendant. The Bulgarian Government shall provide that, where the United Nations national has suffered injury by reason of any such judgment, he shall be restored in the position in which he was before the judgment was given or shall be afforded such relief as may be just and equitable in the circumstances. The term "United Nations nationals" includes corporations or associations organised or constituted under the laws of any of the United Nations.

In faith whereof the undersigned Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in the city of Paris in the Russian, English, French and Bulgarian languages this tenth day of February, One Thousand Nine Hundred Forty-Seven.

Here follow the signatures of the Plenipotentiaries of:

Union of Soviet Socialist Republics	Greece
United Kingdom of Great Britain and Northern Ireland	India
United States of America	New Zealand
Australia	Ukrainian Soviet Socialist Republic
Byelorussian Soviet Socialist Re- public	Union of South Africa
Czechoslovakia	People's Federal Republic of Yugo- slavia
	Bulgaria

TREATY OF PEACE WITH FINLAND, 1947

The Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, India, New Zealand, the Ukrainian Soviet Socialist Republic, and the Union of South Africa, as the States which are at war with Finland and actively waged war against the European enemy states with substantial military forces, hereinafter referred to as "the Allied and Associated Powers," of the one part, and Finland, of the other part;

Whereas Finland, having become an ally of Hitlerite Germany and having participated on her side in the war against the Union of Soviet Socialist Republics, the United Kingdom and other United Nations, bears her share of responsibility for this war;

Whereas, however, Finland on September 4, 1944, entirely ceased military operations against the Union of Soviet Socialist Republics, withdrew from the war against the United Nations, broke off relations with Germany and her satellites, and, having concluded on September 19, 1944, an Armistice with the Governments of the Union of Soviet Socialist Republics and the United Kingdom, acting on behalf of the United Nations at war with Finland, loyally carried out the Armistice terms; and

Whereas the Allied and Associated Powers and Finland are desirous of concluding a treaty of peace which, conforming to the principles of justice, will settle questions still outstanding as a result of the events hereinbefore recited and will form the basis of friendly relations between them, thereby enabling the Allied and Associated Powers to support Finland's application to become a member of the United Nations and also to adhere to any Convention concluded under the auspices of the United Nations;

Have therefore agreed to declare the cessation of the state of war and for this purpose to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

PART I

TERRITORIAL CLAUSES

Article 1

The frontiers of Finland, as shown on the map annexed to the present Treaty (Annex I), shall be those which existed on January 1, 1941, except as provided in the following Article.

Article 2

In accordance with the Armistice Agreement of September 19, 1944, Finland confirms the return to the Soviet Union of the province of Petsamo (Pechenga) voluntarily ceded to Finland by the Soviet State under the Peace Treaties of October 14, 1920, and March 12, 1940. The frontiers of the province of Petsamo (Pechenga) are shown on the map annexed to the present Treaty (Annex I).

PART II**POLITICAL CLAUSES****SECTION I***Article 3*

In accordance with the Armistice Agreement, the effect of the Peace Treaty between the Soviet Union and Finland concluded in Moscow on March 12, 1940, is restored, subject to the replacement of Articles 4, 5 and 6 of that Treaty by Articles 2 and 4 of the present Treaty.

Article 4

1. In accordance with the Armistice Agreement, the Soviet Union confirms the renunciation of its right to the lease of the Peninsula of Hango, accorded to it by the Soviet-Finnish Peace Treaty of March 12, 1940, and Finland for her part confirms having granted to the Soviet Union on the basis of a fifty years lease at an annual rent payable by the Soviet Union of five million Finnish marks the use and administration of territory and waters for the establishment of a Soviet naval base in the area of Porkkala-Udd as shown on the map annexed to the present Treaty (Annex I).

2. Finland confirms having secured to the Soviet Union, in accordance with the Armistice Agreement, the use of the railways, waterways, roads and air routes necessary for the transport of personnel and freight dispatched from the Soviet Union to the naval base at Porkkala-Udd, and also confirms having granted to the Soviet Union the right of unimpeded use of all forms of communication between the Soviet Union and the territory leased in the area of Porkkala-Udd.

Article 5

The Aaland Islands shall remain demilitarized in accordance with the situation as at present existing.

SECTION II*Article 6*

Finland shall take all measures necessary to secure to all persons under Finnish jurisdiction, without distinction as to race, sex, language or re-

ligion, the enjoyment of human rights and of the fundamental freedoms, including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

Article 7

Finland, which in accordance with the Armistice Agreement has taken measures to set free, irrespective of citizenship and nationality, all persons held in confinement on account of their activities in favour of, or because of their sympathies with, the United Nations or because of their racial origin, and to repeal discriminatory legislation and restrictions imposed thereunder, shall complete these measures and shall in future not take any measures or enact any laws which would be incompatible with the purposes set forth in this Article.

Article 8

Finland, which in accordance with the Armistice Agreement has taken measures for dissolving all organisations of a Fascist type on Finnish territory, whether political, military or para-military, as well as other organisations conducting propaganda hostile to the Soviet Union or to any of the other United Nations, shall not permit in future the existence and activities of organisations of that nature which have as their aim denial to the people of their democratic rights.

Article 9

1. Finland shall take all necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity;

(b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.

2. At the request of the United Nations Government concerned, Finland shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Heads of the Diplomatic Missions in Helsinki of the Soviet Union and the United Kingdom, who will reach agreement with regard to the difficulty.

SECTION III

Article 10

Finland undertakes to recognise the full force of the Treaties of Peace with Italy, Roumania, Bulgaria and Hungary and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace.

Article 11

Finland undertakes to accept any arrangements which have been or may be agreed for the liquidation of the League of Nations and the Permanent Court of International Justice.

Article 12

1. Each Allied or Associated Power will notify Finland, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Finland it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.

2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

3. All such treaties not so notified shall be regarded as abrogated.

PART III

MILITARY, NAVAL AND AIR CLAUSES

Article 13

The maintenance of land, sea and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Finland is authorised to have armed forces consisting of not more than:

(a) A land army, including frontier troops and anti-aircraft artillery, with a total strength of 34,400 personnel;

(b) A navy with a personnel strength of 4,500 and a total tonnage of 10,000 tons;

(c) An air force, including any naval air arm, of 60 aircraft, including reserves, with a total personnel strength of 3,000. Finland shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

These strengths shall in each case include combat, service and overhead personnel.

Article 14

The personnel of the Finnish Army, Navy and Air Force in excess of the respective strengths permitted under Article 13 shall be disbanded within six months from the coming into force of the present Treaty.

Article 15

Personnel not included in the Finnish Army, Navy or Air Force shall not receive any form of military training, naval training or military air training as defined in Annex II.

Article 16

1. As from the coming into force of the present Treaty, Finland will be invited to join the Barents, Baltic and Black Sea Zone Board of the International Organisation for Mine Clearance of European Waters and shall maintain at the disposal of the Central Mine Clearance Board all Finnish minesweeping forces until the end of the post-war mine clearance period, as determined by the Central Board.

2. During this post-war mine clearance period, Finland may retain additional naval units employed only for the specific purpose of minesweeping, over and above the tonnage permitted in Article 13.

Within two months of the end of the said period, such of these vessels as are on loan to the Finnish Navy from other Powers shall be returned to those Powers, and all other additional units shall be disarmed and converted to civilian use.

3. Finland is also authorised to employ 1,500 additional officers and men for minesweeping over and above the numbers permitted in Article 13. Two months after the completion of minesweeping by the Finnish Navy, the excess personnel shall be disbanded or absorbed within the numbers permitted in the said Article.

Article 17

Finland shall not possess, construct or experiment with any atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialised types of assault craft.

Article 18

Finland shall not retain, produce or otherwise acquire, or maintain facilities for the manufacture of, war material in excess of that required for the maintenance of the armed forces permitted under Article 13 of the present Treaty.

Article 19

1. Excess war material of Allied origin shall be placed at the disposal of the Allied Power concerned according to the instructions given by that Power. Excess Finnish war material shall be placed at the disposal of the Governments of the Soviet Union and the United Kingdom. Finland shall renounce all rights to this material.

2. War material of German origin or design in excess of that required for the armed forces permitted under the present Treaty shall be placed at the disposal of the Two Governments. Finland shall not acquire or manufacture any war material of German origin or design, or employ or train any technicians, including military and civil aviation personnel, who are or have been nationals of Germany.

3. Excess war material mentioned in paragraphs 1 and 2 of this Article shall be handed over or destroyed within one year from the coming into force of the present Treaty.

4. A definition and list of war material for the purposes of the present Treaty are contained in Annex III.

Article 20

Finland shall co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany may not be able to take steps outside German territory towards rearmament.

Article 21

Finland shall not acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

Article 22

Each of the military, naval and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Finland or, after Finland becomes a member of the United Nations, by agreement between the Security Council and Finland.

PART IV**REPARATION AND RESTITUTION***Article 23*

1. Losses caused to the Soviet Union by military operations and by the occupation by Finland of Soviet territory shall be made good by Finland to the Soviet Union, but taking into consideration that Finland has not only withdrawn from the war against the United Nations, but has also de-

clared war on Germany and assisted with her forces in driving German troops out of Finland, the Parties agree that compensation for the above losses will be made by Finland not in full, but only in part, namely in the amount of \$300,000,000 payable over eight years from September 19, 1944, in commodities (timber products, paper, cellulose, sea-going and river craft, sundry machinery, and other commodities).

2. The basis of calculation for the settlement provided in this Article shall be the United States dollar at its gold parity on the day of the signing of the Armistice Agreement, *i.e.* \$35 for one ounce of gold.

Article 24

Finland, in so far as she has not yet done so, undertakes within the time-limits indicated by the Government of the Soviet Union to return to the Soviet Union in complete good order all valuables and materials removed from its territory during the war, and belonging to State, public or coöperative organisations, enterprises or institutions or to individual citizens, such as: factory and works equipment, locomotives, rolling stock, tractors, motor vehicles, historic monuments, museum valuables and any other property.

PART V

ECONOMIC CLAUSES

Article 25

1. In so far as Finland has not already done so, Finland shall restore all legal rights and interests in Finland of the United Nations and their nationals as they existed on June 22, 1941, and shall return all property in Finland of the United Nations and their nationals as it now exists.

2. The Finnish Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Finnish Government in connection with their return. The Finnish Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between June 22, 1941, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Finnish authorities not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Finnish Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations

nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

4. (a) The Finnish Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Finland, he shall receive from the Finnish Government compensation in Finnish marks to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Finnish nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 8 (a) of this Article, but which have suffered a loss by reason of injury or damage to property in Finland, shall receive compensation in accordance with sub-paragraph (a) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Finland but shall be subject to the foreign exchange control regulations which may be in force in Finland from time to time.

(d) The Finnish Government shall accord to United Nations nationals the same treatment in the allocation of materials for the repair or rehabilitation of their property in Finland and in the allocation of foreign exchange for the importation of such materials as applies to Finnish nationals.

(e) The Finnish Government shall grant United Nations nationals an indemnity in Finnish marks at the same rate as provided in sub-paragraph (a) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Finnish property. This sub-paragraph does not apply to a loss of profit.

5. All reasonable expenses incurred in Finland in establishing claims, including the assessment of loss or damage, shall be borne by the Finnish Government.

6. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Finland by the Finnish Government or any Finnish authority between the date of the Armistice and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting

the costs of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

7. The owner of the property concerned and the Finnish Government may agree upon arrangements in lieu of the provisions of this Article.

8. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Finland.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Finland during the war, have been treated as enemy;

(b) "Owner" means the United Nations national, as defined in sub-paragraph (a) above, who is entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nations national as defined in sub-paragraph (a). If the successor has purchased the property in its damage state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property.

Article 26

Finland recognises that the Soviet Union is entitled to all German assets in Finland transferred to the Soviet Union by the Control Council for Germany and undertakes to take all necessary measures to facilitate such transfers.

Article 27

In so far as any such rights were restricted on account of Finland's participation in the war on Germany's side, the rights of the Finnish Government and of any Finnish nationals, including juridical persons, relating to Finnish property or other Finnish assets on the territories of the Allied and Associated Powers shall be restored after the coming into force of the present Treaty.

Article 28

1. From the coming into force of the present Treaty, property in Germany of Finland and of Finnish nationals shall no longer be treated as enemy property and all restrictions based on such treatment shall be removed.

2. Identifiable property of Finland and of Finnish nationals removed by force or duress from Finnish territory to Germany by German forces or authorities after September 19, 1944, shall be eligible for restitution.

3. The restoration and restitution of Finnish property in Germany shall be effected in accordance with measures which will be determined by the Powers in occupation of Germany.

Article 29

1. Finland waives all claims of any description against the Allied and Associated Powers on behalf of the Finnish Government or Finnish nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Finland at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations or actions of forces or authorities of Allied or Associated Powers in Finnish territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Finland agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Finnish ships or Finnish goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest.

3. Finland likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Finnish Government or Finnish nationals against any of the United Nations whose diplomatic relations with Finland were broken off during the war and which took action in co-operation with the Allied and Associated Powers.

4. The waiver of claims by Finland under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Finnish ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Convention on prisoners of war now in force.

Article 30

1. Pending the conclusion of commercial treaties or agreements between individual United Nations and Finland, the Finnish Government shall, during a period of eighteen months from the coming into force of the pres-

ent Treaty, grant the following treatment to each of the United Nations which, in fact, reciprocally grants similar treatment in like matters to Finland:

(a) In all that concerns duties and charges on importation or exportation, the internal taxation of imported goods and all regulations pertaining thereto, the United Nations shall be granted unconditional most-favoured-nation treatment;

(b) In all other respects, Finland shall make no arbitrary discrimination against goods originating in or destined for any territory of any of the United Nations as compared with like goods originating in or destined for territory of any other of the United Nations or of any other foreign country;

(c) United Nations nationals, including juridical persons, shall be granted national and most-favoured-nation treatment in all matters pertaining to commerce, industry, shipping and other forms of business activity within Finland. These provisions shall not apply to commercial aviation;

(d) Finland shall grant no exclusive or discriminatory right to any country with regard to the operation of commercial aircraft in international traffic, shall afford all the United Nations equality of opportunity in obtaining international commercial aviation rights in Finnish territory, including the right to land for refueling and repair, and, with regard to the operation of commercial aircraft in international traffic, shall grant on a reciprocal and non-discriminatory basis to all United Nations the right to fly over Finnish territory without landing. These provisions shall not affect the interests of the national defence of Finland.

2. The foregoing undertakings by Finland shall be understood to be subject to the exceptions customarily included in commercial treaties concluded by Finland before the war; and the provisions with respect to reciprocity granted by each of the United Nations shall be understood to be subject to the exceptions customarily included in the commercial treaties concluded by that State.

Article 31

1. Any disputes which may arise in connection with Articles 24 and 25 and Annexes IV, V and VI, part B, of the present Treaty shall be referred to a Conciliation Commission composed of an equal number of representatives of the United Nations Government concerned and of the Finnish Government. If agreement has not been reached within three months of the dispute having been referred to the Conciliation Commission, either Government may require the addition of a third member to the Commission, and, failing agreement between the two Governments on the selection of this

member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission and shall be accepted by the parties as definitive and binding.

Article 32

Articles 24, 25, 30 and Annex VI of the present Treaty shall apply to the Allied and Associated Powers and France and to those of the United Nations whose diplomatic relations with Finland have been broken off during the war.

Article 33

The provisions of Annexes IV, V and VI shall, as in the case of the other Annexes, have force and effect as integral parts of the present Treaty.

PART VI

FINAL CLAUSES

Article 34

1. For a period not to exceed eighteen months from the coming into force of the present Treaty, the Heads of the Diplomatic Missions in Helsinki of the Soviet Union and the United Kingdom, acting in concert, will represent the Allied and Associated Powers in dealing with the Finnish Government in all matters concerning the execution and interpretation of the present Treaty.

2. The Two Heads of Mission will give the Finnish Government such guidance, technical advice and clarification as may be necessary to ensure the rapid and efficient execution of the present Treaty both in letter and in spirit.

3. The Finnish Government shall afford the said Two Heads of Mission all necessary information and any assistance which they may require for the fulfilment of the tasks devolving on them under the present Treaty.

Article 35

1. Except where another procedure is specifically provided under any Article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the Two Heads of Mission acting under Article 34, except that in this case the Heads of Mission will not be restricted by the time limit provided in that Article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement

of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 36

The present Treaty, of which the Russian and English texts are authentic, shall be ratified by the Allied and Associated Powers. It shall also be ratified by Finland. It shall come into force immediately upon the deposit of ratifications by the Union of Soviet Socialist Republics and the United Kingdom of Great Britain and Northern Ireland. The instruments of ratification shall, in the shortest time possible, be deposited with the Government of the Union of Soviet Socialist Republics.

With respect to each Allied or Associated Power whose instrument of ratification is thereafter deposited, the Treaty shall come into force upon the date of deposit. The present Treaty shall be deposited in the archives of the Government of the Union of Soviet Socialist Republics, which shall furnish certified copies to each of the signatory States.

LIST OF ANNEXES

- I. Map of the Frontiers of Finland and the Areas mentioned in Articles 2 and 4
- II. Definition of Military, Military Air and Naval Training
- III. Definition and list of war material
- IV. Special provisions relating to certain kinds of property:
 - A. Industrial, Literary and Artistic Property
 - B. Insurance
- V. Contracts, Prescription and Negotiable Instruments
- VI. Prize Courts and Judgments

ANNEX I

(See Articles 1, 2 and 4)

Map of the Frontiers of Finland and the Areas mentioned in Articles 2 and 4

ANNEX II

(See Article 15)

Definition of Military, Military Air and Naval Training

1. Military training is defined as: the study of and practice in the use of war material specially designed or adapted for army purposes, and train-

ing devices relative thereto; the study and carrying out of all drill or movements which teach or practice evolutions performed by fighting forces in battle; and the organized study of tactics, strategy and staff work.

2. Military air training is defined as: the study of and practice in the use of war material specially designed or adapted for air force purposes, and training devices relative thereto; the study and practice of all specialised evolutions, including formation flying, performed by aircraft in the accomplishment of an air force mission, and the organised study of air tactics, strategy and staff work.

3. Naval training is defined as: the study, administration or practice in the use of warships or naval establishments as well as the study or employment of all apparatus and training devices relative thereto, which are used in the prosecution of naval warfare, except for those which are also normally used for civilian purposes; also the teaching, practice or organised study of naval tactics, strategy and staff work including the execution of all operations and manoeuvres not required in the peaceful employment of ships.

ANNEX III

(See Article 19)

Definition and List of War Material

The term "war material" as used in the present Treaty shall include all arms, ammunition and implements specially designed or adapted for use in war as listed below.

The Allied and Associated Powers reserve the right to amend the list periodically by modification or addition in the light of subsequent scientific development.

Category I

1. Military rifles, carbines, revolvers and pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use.

2. Machine guns, military automatic or autoloading rifles, and machine pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use; machine gun mounts.

3. Guns, howitzers, mortars, cannon special to aircraft; breechless or recoil-less guns and flamethrowers, barrels and other spare parts not readily adaptable for civilian use; carriages and mountings for the foregoing.

4. Rocket projectors; launching and control mechanisms for self-propelling and guided missiles; mountings for same.

5. Self-propelling and guided missiles, projectiles, rockets, fixed ammunition and cartridges, filled or unfilled, for the arms listed in sub-paragraphs 1-4 above and fuses, tubes or contrivances to explode or operate them. Fuses required for civilian use are not included.

6. Grenades, bombs, torpedoes, mines, depth charges and incendiary materials or charges, filled or unfilled; all means for exploding or operating them. Fuses required for civilian use are not included.

7. Bayonets.

Category II

1. Armoured fighting vehicles; armoured trains, not technically convertible to civilian use.

2. Mechanical and self-propelled carriages for any of the weapons listed in Category I; special type military chassis or bodies other than those enumerated in sub-paragraph 1 above.

3. Armour plate, greater than three inches in thickness, used for protective purposes in warfare.

Category III

1. Aiming and computing devices, including predictors and plotting apparatus, for fire control; direction of fire instruments; gun sights; bomb sights; fuse setters; equipment for the calibration of guns and fire control instruments,

2. Assault bridging, assault boats and storm boats.

3. Deceptive warfare, dazzle and decoy devices.

4. Personal war equipment of a specialized nature not readily adaptable to civilian use.

Category IV

1. Warships of all kinds, including converted vessels and craft designed or intended for their attendance or support, which cannot be technically reconverted to civilian use, as well as weapons, armour, ammunition, aircraft and all other equipment, material, machines and installations not used in peace time on ships other than warships.

2. Landing craft and amphibious vehicles or equipment of any kind; assault boats or devices of any type as well as catapults or other apparatus for launching or throwing aircraft, rockets, propelled weapons or any other missile, instrument or device whether manned or unmanned, guided or uncontrolled.

3. Submersible or semi-submersible ships, craft, weapons, devices or apparatus of any kind, including specially designed harbour defence booms, except as required by salvage, rescue or other civilian uses, as well as all equipment, accessories, spare parts, experimental or training aids, instruments or installations as may be especially designed for the construction, testing, maintenance or housing of the same.

Category V

1. Aircraft, assembled or unassembled, both heavier and lighter than air, which are designed or adapted for aerial combat by the use of machine

guns, rocket projectors or artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of their design or construction are prepared for, any of the appliances referred to in subparagraph 2 below.

2. Aerial gun mounts and frames, bomb racks, torpedo carriers and bomb release or torpedo release mechanisms; gun turrets and blisters.

3. Equipment specially designed for and used solely by airborne troops.

4. Catapults or launching apparatus for ship-borne, land- or sea-based aircraft; apparatus for launching aircraft weapons.

5. Barrage balloons.

Category VI

Asphyxiating, lethal, toxic or incapacitating substances intended for war purposes, or manufactured in excess of civilian requirements.

Category VII

Propellants, explosives, pyrotechnics or liquefied gases destined for the propulsion, explosion, charging or filling of, or for use in connection with, the war material in the present categories, not capable of civilian use or manufactured in excess of civilian requirements.

Category VIII

Factory and tool equipment specially designed for the production and maintenance of the material enumerated above and not technically convertible to civilian use.

ANNEX IV

Special Provisions Relating to Certain Kinds of Property

A. INDUSTRIAL, LITERARY AND ARTISTIC PROPERTY

1. (a) A period of one year from the coming into force of the present Treaty shall be accorded to the Allied and Associated Powers and their nationals without extension fees or other penalty of any sort in order to enable them to accomplish all necessary acts for the obtaining or preserving in Finland of rights in industrial, literary and artistic property which were not capable of accomplishment owing to the existence of a state of war.

(b) Allied and Associated powers or their nationals who had duly applied in the territory of any Allied or Associated Power for a patent or registration of a utility model not earlier than twelve months before the outbreak of the war with Finland or during the war, or for the registration of an industrial design or model or trade mark not earlier than six months before the outbreak of the war with Finland or during the war, shall be entitled within twelve months after the coming into force of the present

Treaty to apply for corresponding rights in Finland, with a right of priority based upon the previous filing of the application in the territory of that Allied or Associated Power.

(c) Each of the Allied and Associated Powers and its nationals shall be accorded a period of one year from the coming into force of the present Treaty during which they may institute proceedings in Finland against those natural or juridical persons who are alleged illegally to have infringed their rights in industrial, literary or artistic property between the date of the outbreak of the war and the coming into force of the Treaty.

2. A period from the outbreak of the war until a date eighteen months after the coming into force of the present Treaty shall be excluded in determining the time within which a patent must be worked or a design or trade mark used.

3. The period from the outbreak of the war until the coming into force of the present Treaty shall be excluded from the normal term of rights in industrial, literary and artistic property which were in force in Finland at the outbreak of the war or which are recognised or established under part A of this Annex and belong to any of the Allied and Associated Powers or their nationals. Consequently, the normal duration of such rights shall be deemed to be automatically extended in Finland for a further term corresponding to the period so excluded.

4. The foregoing provisions concerning the rights in Finland of the Allied and Associated Powers and their nationals shall apply equally to the rights in the territories of the Allied and Associated Powers of Finland and its nationals. Nothing, however, in these provisions shall entitle Finland or its nationals to more favourable treatment in the territory of any of the Allied and Associated Powers than is accorded by such Power in like cases to other United Nations or their nationals, nor shall Finland be thereby required to accord to any of the Allied and Associated Powers or its nationals more favourable treatment than Finland or its nationals receive in the territory of such Power in regard to the matters dealt with in the foregoing provisions.

5. Third parties in the territories of any of the Allied and Associated Powers or Finland who, before the coming into force of the present Treaty, had bona fide acquired industrial, literary or artistic property rights conflicting with rights restored under part A of this Annex or with rights obtained with the priority provided thereunder, or had bona fide manufactured, published, reproduced, used or sold the subject matter of such rights, shall be permitted, without any liability for infringement, to continue to exercise such rights and to continue or to resume such manufacture, publication, reproduction, use or sale which had been bona fide acquired or commenced. In Finland, such permission shall take the form of a non-exclusive licence granted on terms and conditions to be mutually agreed by the parties thereto or, in default of agreement, to be fixed by the Concilia-

tion Commission established under Article 31 of the present Treaty. In the territories of each of the Allied and Associated Powers, however, bona fide third parties shall receive such protection as is accorded under similar circumstances to bona fide third parties whose rights are in conflict with those of the nationals of other Allied and Associated Powers.

6. Nothing in part A of this Annex shall be construed to entitle Finland or its nationals to any patent or utility model rights in the territory of any of the Allied and Associated Powers with respect to inventions, relating to any article listed by name in Annex III of the present Treaty, made, or upon which applications were filed, by Finland, or any of its nationals, in Finland or in the territory of any other of the Axis Powers, or in any territory occupied by the Axis forces, during the time when such territory was under the control of the forces or authorities of the Axis Powers.

7. Finland shall likewise extend the benefits of the foregoing provisions of this Annex to France, and to other United Nations, which are not Allied or Associated Powers, whose diplomatic relations with Finland have been broken off during the war and which undertake to extend to Finland the benefits accorded to Finland under the said provisions.

8. Nothing in part A of this Annex shall be understood to conflict with Articles 25 and 27 of the present Treaty.

B. INSURANCE

1. No obstacles, other than any applicable to insurers generally, shall be placed in the way of the resumption by insurers who are United Nations nationals of their former portfolios of business.

2. Should an insurer, who is a national of any of the United Nations, wish to resume his professional activities in Finland, and should the value of the guarantee deposits or reserves required to be held as a condition of carrying on business in Finland be found to have decreased as a result of the loss or depreciation of the securities which constituted such deposits or reserves, the Finnish Government undertakes to accept, for a period of eighteen months, such securities as still remain as fulfilling any legal requirements in respect of deposits and reserves.

ANNEX V

Contracts, Prescription and Negotiable Instruments

A. CONTRACTS

1. Any contract which required for its execution intercourse between any of the parties thereto having become enemies as defined in part D of this Annex, shall, subject to the exceptions set out in paragraphs 2 and 3 below, be deemed to have been dissolved as from the time when any of the parties thereto became enemies. Such dissolution, however, shall not relieve

any party to the contract from the obligation to repay amounts received as advances or as payments on account and in respect of which such party has not rendered performance in return.

2. Notwithstanding the provisions of paragraph 1 above, there shall be excepted from dissolution and there shall remain in force such parts of any contract as are severable and did not require for their execution intercourse between any of the parties thereto, having become enemies as defined in part D of this Annex. Where the provisions of any contract are not so severable, the contract shall be deemed to have been dissolved in its entirety. The foregoing shall be subject to the application of domestic laws, orders or regulations made by any of the Allied and Associated Powers having jurisdiction over the contract or over any of the parties thereto and shall be subject to the terms of the contract.

3. Nothing in part A of this Annex shall be deemed to invalidate transactions lawfully carried out in accordance with a contract between enemies if they have been carried out with the authorization of the Government of one of the Allied and Associated Powers.

4. Notwithstanding the foregoing provisions, contracts of insurance and re-insurance shall be subject to separate agreements between the Government of the Allied or Associated Power concerned and the Government of Finland.

B. PERIODS OF PRESCRIPTION

1. All periods of prescription or limitation of right of action or of the right to take conservatory measures in respect of relations, affecting persons or property, involving United Nations nationals and Finnish nationals who, by reason of the state of war, were unable to take judicial action or to comply with the formalities necessary to safeguard their rights, irrespective of whether these periods commenced before or after the outbreak of war, shall be regarded as having been suspended, for the duration of the war, in Finnish territory on the one hand, and on the other hand in the territory of those United Nations which grant to Finland, on a reciprocal basis, the benefit of the provisions of this paragraph. These periods shall begin to run again on the coming into force of the present Treaty. The provisions of this paragraph shall be applicable in regard to the periods fixed for the presentation of interest or dividend coupons or for the presentation for payment of securities drawn for repayment or repayable on any other ground.

2. Where, on account of failure to perform any act or to comply with any formality during the war, measures of execution have been taken in Finnish territory to the prejudice of a national of one of the United Nations, the Finnish Government shall restore the rights which have been detrimentally affected. If such restoration is impossible or would be inequitable, the Finnish Government shall provide that the United Nations

national shall be afforded such relief as may be just and equitable in the circumstances.

C. NEGOTIABLE INSTRUMENTS

1. As between enemies, no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment, or to give notice of non-acceptance or non-payment to drawers or endorsers, or to protest the instrument, nor by reason of failure to complete any formality during the war.

2. Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or endorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment, has failed to do so during the war, a period of not less than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment, or protest may be made.

3. If a person has, either before or during the war, incurred obligations under a negotiable instrument in consequence of an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of these obligations, notwithstanding the outbreak of war.

D. GENERAL PROVISION

For the purposes of this Annex, natural, or juridical persons shall be regarded as enemies from the date when trading between them shall have become unlawful under laws, orders or regulations to which such persons or the contracts were subject.

ANNEX VI

Prize Courts and Judgments

A. PRIZE COURTS

Each of the Allied and Associated Powers reserves the right to examine, according to a procedure to be established by it, all decisions and orders of the Finnish Prize Courts in cases involving ownership rights of its nationals, and to recommend to the Finnish Government that revision shall be undertaken of such of those decisions or orders as may not be in conformity with international law.

The Finnish Government undertakes to supply copies of all documents comprising the records of these cases, including the decisions taken and

orders issued, and to accept all recommendations made as a result of the examination of the said cases, and to give effect to such recommendations.

B. JUDGMENTS

The Finnish Government shall take the necessary measures to enable nationals of any of the United Nations at any time within one year from the coming into force of the present Treaty to submit to the appropriate Finnish authorities for review any judgment given by a Finnish court between June 22, 1941, and the coming into force of the present Treaty in any proceeding in which the United Nations national was unable to make adequate presentation of his case either as plaintiff or defendant. The Finnish Government shall provide that, where the United Nations national has suffered injury by reason of any such judgment, he shall be restored in the position in which he was before the judgment was given or shall be afforded such relief as may be just and equitable in the circumstances. The term "United Nations nationals" includes corporations or associations organised or constituted under the laws of any of the United Nations.

In faith whereof the undersigned Plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in the city of Paris in the Russian, English, French and Finnish languages this tenth day of February, One Thousand Nine Hundred Forty-Seven.

Here follow the signatures of the Plenipotentiaries of:

Union of Soviet Socialist Republics	Czechoslovakia
United Kingdom of Great Britain and Northern Ireland	India
Australia	New Zealand
Byelorussian Soviet Socialist Re- public	Ukrainian Soviet Socialist Republic
Canada	Union of South Africa
	Finland

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THE PROGRESSIVE DEVELOPMENT OF WORLD COPYRIGHT LAW

BY NATALIO CHEDIAK

*Secretary-General of FISAC**

The three years that have elapsed since the end of the Second World War in Europe have shown the need for ever-increasing labor in the field of copyright law. With our world drawn ever closer, the two existing systems for the protection of intellectual workers will necessarily meet more frequently. A detailed study of the historical background and present makeup of these two bodies of conventional law should lay the groundwork for their coördination.

For many years this desire for coördination—and later unification—has been ardently backed by a large percentage of the experts in this field. The necessity was recognized at the Rome Conference in 1928, which met to revise the Bern Convention. It is relevant that that conference approved a resolution presented by the delegations of Brazil and France suggesting study of the two systems with a view to their harmonization.

The Contribution of America

In October, 1941, in the midst of the European war, there was published in *Droit d'Auteur* an article on "International Copyright Protection in the New World,"¹ which stated that the war had paralyzed and necessarily retarded work for the development and improvement of the system of copyright protection: "America is more privileged than Europe in this matter (as possibly in others). It can continue to work on the establishment of a copyright statute in the New World." It went on to say:

A truly world-wide convention in our field grouping all the countries on this planet in a single union with a single universal statute such as the statute of the Postal Union seems a fantastic idea at this moment and for some time to come. Unity which does not exist in ideas or in fact should not be sought, but rather efforts should be made to attain the institution which time has shown to be practicable.

* Inter-American Federation of Authors' and Composers' Societies. This article is based on the report made to the Second General Conference of UNESCO and other papers of Dr. Chediak, the Cuban delegate to that conference and reporter for the Working Party on Copyright. The translation was made by David S. Stern of New York.

¹ *Droit d'Auteur*, Vol. 54, No. 10 (Oct. 15, 1941), p. 130.

A few months after these lines were written, our continent entered the war and made it world-wide in scope.

At the present time there are two great systems of protective conventions: one, the American, established through the Inter-American treaties signed in Montevideo (1889),² Mexico (1902),³ Rio de Janeiro (1906),⁴ Buenos Aires (1910),⁵ Havana (1928),⁶ and Washington (1946);⁷ the other the Bern-Rome Convention,⁸ open to the adherence of all the governments of the world. The Pan American system is continental in nature since it is restricted to the American Republics.

Much work has been carried on in Europe and in America in order to compare and harmonize these two great conventional systems of intellectual protection. The results of the most recent conferences, official as well as unofficial, which have dealt with this problem on the American Continent, illustrate the trend of ideas up to the present and the possible future orientations.

The Eighth American Scientific Congress, which met in Washington in 1940, approved a resolution which states in this connection:

That the possibility of reconciling the two great systems of copyright protection, the Berne Union and the Pan American, be kept in mind and that the effort in this direction be renewed once peace is restored in Europe.⁹

² Treaty on Literary and Artistic Copyright, Feb. 11, 1889. *Actas y Tratados celebrados por el Congreso Internacional Sud-Americano de Montevideo, 1888-1889* Montevideo, "El Siglo Ilustrado," 1911), p. 782.

³ Convention on Literary and Artistic Copyrights, Jan. 27, 1902. U. S. Treaty Series No. 491, 35 U. S. Stat. 1934; *International Conferences of American States, 1889-1928* (New York, Oxford University Press, 1931), p. 71.

⁴ Convention on Patents of Invention, Drawings and Industrial Models, Trademarks, and Literary and Artistic Property, Aug. 23, 1906. *International Conferences of American States, 1889-1928*, p. 136.

⁵ Convention on Literary and Artistic Copyright, Aug. 11, 1910. U. S. Treaty Series No. 593, 38 U. S. Stat. 1785; *International Conferences of American States, 1889-1928*, p. 180.

⁶ Convention revising Convention of Buenos Aires on Literary and Artistic Copyright, Feb. 18, 1928. *Final Act of 6th Conference of American States*, p. 123; *International Conferences of American States, 1889-1928*, p. 409; this JOURNAL, Supp., Vol. 22 (1928), p. 124.

⁷ Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works, 1946. *Inter-American Conference of Experts on Copyright, Washington, June 1-22, 1946, Acts and Documents*, Pan American Union, Congress and Conference Series, No. 51, p. 103.

⁸ Convention for Protection of Literary and Artistic Works, Bern, Sept. 9, 1886, revised Berlin, Nov. 13, 1908, and Rome, June 2, 1928. Great Britain, Treaty Series, No. 12 (1932); Canada Treaty Series (1931), No. 3.

⁹ *Proceedings of Eighth American Scientific Congress, Washington, 1940* (Washington, Department of State, 1941), Vol. I, p. 259; N. Chediak, *Unification of the International Standards Regulating Copyright* (Havana, 1941).

The First Inter-American Bar Conference, which met in Havana in March, 1941,¹⁰ agreed to recommend that the American countries which had not yet done so should ratify the Buenos Aires Convention (1910)¹¹ and that this convention should be modified in certain respects.

In November of the same year, during the Second American Conference of National Commissions on Intellectual Co-operation, which was also held in Havana, basic ideas were introduced for effective protection through national societies of authors, and agreements were concluded founding the Inter-American Federation of Authors' and Composers' Societies (FISAC), on November 22, 1941.

Since 1942¹² the Committee on Copyright of the Inter-American Bar Association has worked on a comparative study of legislation and judicial decisions in this field. The 1943 meeting of the Association in Rio de Janeiro recommended adherence to the Berne Convention by all American nations.

The Inter-American Academy of Comparative and International Law accepted unanimously the author's conclusions at its session held in Havana in 1945. It was felt that protection of intellectual property should be brought into the new world organization and the author stated:

With regard to the world situation, I believe we should have in this sphere an organisation which will permit the maintenance so far as this may prove unavoidable of a dualism between the continental systems, but with sufficient authority to facilitate a reconciling of discrepancies which might still exist between the new American Convention which we aspire to and the Berne-Rome Convention.¹³

Another step forward is to be found in the Washington Convention of 1946,¹⁴ drawn up by the Inter-American Conference of Experts. This

¹⁰ N. Chediak, "The Precarious Situation of Copyright in America," *Revista de Derecho Internacional*, Vol. 20 (March, 1941), p. 89.

¹¹ U. S. Treaty Series, No. 593, 38 U. S. Stat. 1785; *International Conferences of American States, 1889-1928*, p. 180.

¹² N. Chediak, *Annual Report to the Executive Board of the Inter-American Bar Association*, 1942.

¹³ N. Chediak, *Copyright in America within the New World Organisation*. The following statement was made some time later by Dr. Luis A. Baralt:

. . . in examining the Federation's work concerning copyright, it is only necessary to recall that at its first meeting in 1945, the Inter-American Academy of Comparative and International Law approved in a round-table discussion the statement of the Secretary-General of FISAC tending to ensure copyright and its defense a suitable place within the proposed world organization. . . . And these resolutions, which were also approved by the First Congress of FISAC, were later presented to the San Francisco Conference which drafted the Charter of the United Nations.

Related to this directive, there was submitted to the San Francisco Conference a Cuban motion for the creation in the post-war world of an international organization for intellectual coöperation, which, although it was not accepted, led to an agreement recommending the holding of an international conference on intellectual coöperation, which took place in London and resulted in the formation of UNESCO, the education, scientific and cultural agency of the United Nations.

¹⁴ *Inter-American Conference of Experts on Copyright, Washington, June 1-22, 1946, Acts and Documents*, Pan American Union, Congress and Conference Series, No. 51, p. 103.

undoubtedly represents a great united effort by America for the standardization of copyright, giving America continental unanimity before peace came. The world order demanded by authors, and today proposed by UNESCO, can, because of this achievement, now more readily be realized.

The United Nations and UNESCO

The United Nations Educational, Scientific and Cultural Organization was established at the London Conference of November 1 to 16, 1945, for the purpose of promoting the aims expressed in Article 1, paragraph 3, of the United Nations Charter.

As a specialized agency of the United Nations, the aim of the organization, as stated in its Constitution, is to:

Collaborate in the work of advancing the mutual knowledge and understanding of peoples . . . and . . . recommend such international agreements as may be necessary to promote the free flow of ideas by word and image; give fresh impulse to popular education and to the spread of culture; . . . maintain, increase and diffuse knowledge; . . . by encouraging cooperation among the nations in all branches of intellectual activity; . . . by initiating methods of international cooperation calculated to give the people of all countries access to the printed and published materials produced by any of them.

The first General Conference of UNESCO opened in Paris on November 19, 1946, and since that time it has undertaken activities covering vast fields for the promotion of peace and international understanding through education, science and culture. On the recommendation of a Committee of Experts on Copyright and of the delegates of different organizations¹⁵ devoted to the protection of these rights, UNESCO initiated many activities for 1947.¹⁶

FISAC was the first institution in the field of copyright to undertake measures for its legal and conventional defense through the United Nations, proposing as early as January, 1945¹⁷ what in those days seemed very bold, but might today become the world-wide solution sought by UNESCO; and it chose an opportune moment to call attention to the international protection of copyright at the time when the reconstruction of the world was being officially planned at the San Francisco Conference.

This improvement of the Pan American system of conventions is not contrary to the world-wide tendencies of copyright. Among the formulae proposed for the introduction of universal standards, there is included

¹⁵ See editorial in *Revista Interamericana de Derechos de Autor*, No. 3, 1947.

¹⁶ See Report of First General Conference of UNESCO, Project 4, UNESCO/C/30, p. 226.

¹⁷ See Valerio de Sanctis, "*Il Diritto di Autore Negli Ultimi Tre Anni, 1944-1946*," in *Il Diritto di Autore*, Special Number. See also Second General Conference of UNESCO, 1947, Doc. 2 C/E/2, p. 4.

that of drawing up, on the basis of provisions common to the existing conventions, a third convention to unite the two continents without affecting the functioning of their individual systems and to provide universal protection for the most important rights.¹⁸

The Second Congress of FISAC, held in October, 1946, in Washington, reached the following agreement with regard to the international protection of copyright:

(1) To recommend to UNESCO that in its work, and particularly in the conference which it is convening for the standardization of Copyright, it should take into account the Berne and Washington Conventions and hear the views of existing international organizations for the defense of copyright; and

(2) That, in view of the technical complexities of copyright, FISAC suggests that the conference referred to should be of a specialist nature and be composed of experts upon the subject.

This agreement was communicated on November 30, 1946, to the Director General of UNESCO, Dr. Julian Huxley.

Although copyright in America has thrown off the monopoly under which it lay before World War II, the recommendations of the Committee of Experts in drawing up the Washington Convention as well as the Final Act of that Conference show clearly the direction taken by the American Republics: that of coördination of continental efforts leading to the perfection of inter-continental unity. All these efforts converge in the maintenance of the unity indispensable to the continent and thus lay the foundations of the world edifice which is today being built by UNESCO.

In February, 1947, UNESCO solicited, by means of a questionnaire, the views of the member states in regard to the study of a projected world conference on copyright law. This action was in accordance with resolutions taken by the First Conference of UNESCO.¹⁹ When the organization received an insufficient number of immediate replies, it designated Dr. Francois Hepp, expert adviser to UNESCO in this field, to remind the members of the great importance which the organization placed on receiving their points of view on the February questionnaire. In the late summer of 1947, preparations were made for the meeting of a Provisional Committee of Expert Technicians in this field. This committee was to review the then-existing state of the law and make recommendations controlling the scope of the Secretariat's work.²⁰

The following experts answered the call for the meetings of the committee which took place at the seat of the organization in Paris from September 15 to 20, 1947. They were: Dr. Edith E. Ware and Mr. John

¹⁸ Proposal of the International Institute of Intellectual Coöperation, IIC Doc.

¹⁹ See Report of First General Conference of UNESCO, *loc. cit.*

²⁰ For proceedings and recommendations of the Provisional Committee of Experts, see Report on Copyright by Director General of UNESCO to the Second Session of the General Conference and Annexes thereto, Doc. 2C/37, Paris, Oct. 5, 1947.

Schulman, United States; Senator Antuna, Uruguay; Mr. Coppieters de Gibson, Belgium; Mr. Jean Escarra, France (Chairman); Dr. G. H. Hatchmann, United Kingdom; Mr. Jean Lesman, Poland; Mr. Eduardo Mendilaharsu, Argentina; Mr. Benigne Mentha, Switzerland; Mr. Valerio de Sanctis, Italy; Mr. Abdel Monein el Tanamli, Egypt.

Three fundamental questions arose out of the intensive work of these experts which encompassed in general terms the scope UNESCO's work should take in this field:

- (1) What line of action should be followed as regards copyright and what were the first practical steps to be taken;
- (2) How far was it desirable for UNESCO to participate in international conferences, especially that called to revise the Berne Convention, and what form this participation should take;
- (3) The method to be adopted for the drafting of a projected universal convention.

The Provisional Committee of Experts on Copyright recommended, among other things:

- (1) that Unesco should undertake the study and examination of copyright questions and conditions as they apply throughout the countries of the world and between countries, with a view to preparing, either itself or in conjunction with the United Nations, a project for a universal copyright system, and that this study shall include but not be limited to, a study of the work done to date;
- (2) that for the present Unesco should not undertake the preparation of any draft of a universal convention;
- (3) that ultimately, on the basis of the studies to be made, a new draft of a universal convention should be prepared under the auspices of Unesco, for submission to their respective governments;
- (4) that in its studies, Unesco re-examine the work previously done in the light of present conditions, with a view to suggesting such changes as may be required;
- (5) that every effort should be made in the preparatory studies to take into account the actual status of protection of literary, artistic and scientific works in the various countries;
- (6) that in making these studies, careful consideration should be given to the rights and necessities in the different countries, of authors, industrial interests and the public at large;
- (7) that part of its studies, which this Committee recommends should be made, and pending the completion of such studies, and pending the preparation of a definite programme, Unesco should make itself conversant by all appropriate means with all current activities and proceedings relating to international copyright, but it should remain neutral and not commit itself in respect thereof. . . .²¹

These final suggestions, which were unanimously adopted by the Provisional Committee, were forwarded to the Secretariat of UNESCO and

²¹ Report on Copyright by Director General of UNESCO to the Second Session of the General Conference, Annex I, Part I, Doc. 2C/37 (Paris, Oct. 5, 1947), pp. 1-2.

were invaluable in the work of the Second Conference. They went far toward defining the aims of this organization in working for a wider recognition of copyright law on a world-wide basis.

Second General Conference of UNESCO

At the first meeting of the working section of the Conference, major attention was paid to a consideration of all this valuable spade-work already done. Coördination of the various matters referred to the section by the Conference was achieved by the adoption of the agenda suggested by the eminent delegate of Mexico, Lic. German Fernandez del Castillo. The agenda provided for a consideration of the various documents already submitted, together with the recommendations formulated by the Provisional Committee of Experts. The next problem on the agenda was to define the program of UNESCO in the field of copyright and more particularly the steps to be taken in preparing the universal convention. In this matter the memorandum of the Director General was to be considered most carefully and resolutions were to be taken on the coöperation of UNESCO in the international conference planned by the Belgian Government for 1948. Finally, the working section was to consider the recommendations of National Copyright Commissions of member states and handle all matters submitted by the various delegations during the course of the General Conference.

This agenda was regarded as the base to be enlarged as the need might dictate, to the end that world consciousness would be aroused and directed toward the enactment of greater legal protection which is required by all intellectual and creative workers in the complex century in which we live.

The Interest of UNESCO

UNESCO is pursuing two principle objectives in the field of international protection of copyright. The first of these, briefly described in the "Program of UNESCO for 1948" under the title "Methods for the Diffusion of Ideas," is the desire to assure the broadest spread of information and culture in general. It assumes that copyright as such represents a restraint on the aforementioned freedom of circulation.

This idea was expressed some years ago by the American Commission engaged in a study of the Inter-American system for the protection of intellectual property.²² The commission concluded that a positive contribution would be made, and an improvement in the relations of the nations in this system would be achieved "by the stimulus which greater protection would give to authors and editors to extend the market for their

²² See American National Committee on International Intellectual Coöperation, Committee for the Study of Copyright, *Comparative Study of Copyright Protection in Latin-America, 1938* (New York, 1938).

articles and books to those countries in which they do not presently circulate due to the lack of copyright protection." This fact should prove of particular interest in these times, when such great reliance is placed on diffusion of knowledge and culture, through the powerful media of screen, press, radio and television.

The second objective which UNESCO pursues in this field is the protection of cultures in all of their manifestations. With this in mind, it would be better to include progressive development of copyright law in Chapter I of the UNESCO Program for 1948,²³ which deals specifically with "Culture" rather than to include it, as at present, in Chapter II, dealing with the "free circulation of ideas." Our efforts are directed above all to the elimination of barriers which impede international cultural interchange through the progressive expansion of legal protection to be accorded all cultural products. The beneficial effect of such heightened protection cannot be overstated. Its first and most lasting result would be a more cohesive, vigorous and healthy "culture."

It has been said many times that the culture of a people is a reflection of its soul; that the culture of a nation gives it its personality, enhances its prestige and permits it to realize its highest destiny. But the simile would never be more than mere rhetoric if we do not understand it fully, remembering always that no soul can survive without a body to nourish it. The duality of the spiritual and the material is one of those axioms, loss of sight of which leads to the most vain and sterile romanticism. Culture has as its "body" the sum total of all the efforts of all of its human creators. And it would be vain to protest the defense of culture and a desire for its diffusion were we not to care for the health and well-being of those who create it.

This need will not be satisfied merely by giving the producers of culture a flattering social position. It is indispensable that the writer, the artist, the creator of culture in general, be able to live, in the broadest sense possible, from the fruits of his own labor; to live, not solely the noble life of the spirit, but as well the brute material life of the body. As a contribution to the higher quality of his work, it is vital that the intellectual worker need not derive his income from activities foreign to his vocation. Far better is it that the full panoply of his specific talent, driven by his concentrated energies be capable of sustaining a proper and serene material existence.

Unfortunately, the greatest number of our peoples are too small, constitute too reduced cultural ambits, to permit the creators of culture to live exclusively off the income derived from the sale of their products in the domestic market of culture. This we must admit without squeamishness.

²³ UNESCO Doc. 2C/129 (Rev.); Report of United States Delegation on Second Session, General Conference, Part II, Final Resolutions (Department of State Publication 3082, International Organization and Conference Series, IV, UNESCO 1), p. 90.

The diffusion of literary and musical works is not only important for its meaning in the spread of learning and spiritual contacts between our peoples. It is also important for its contribution in expanding the market for the consumption of artistic works and in broadening the base which sustains the creative process. The peoples which do not have a sufficiently broad cultural environment to assure their writers and artists adequate means of living must and should complement each other. This coöperation can only be secured and kept effective through adequate protection under copyright law.

For all of the foregoing reasons the writer feels that UNESCO must seize the active leadership in studying, drafting and battling for the adoption of new juridical formulae, new techniques to make the international system of copyright law effective. This will open broader channels for spiritual communication (diffusion of ideas) between our peoples. It will make the cultural life of each country, the majority small ones, more vital and more sustained, richer and more vigorous.

Declaration of Principles

The actual working of the Copyright Section of the Conference was directed by the Mexican delegate, Lic. Fernández del Castillo, as President, the Polish delegate, Dr. Alexander W. Rudinski, Vice President, and the author as reporter. The Director General of UNESCO was represented by Dr. Francois Hepp, well-known specialist in the field of copyright law. The delegates agreed unanimously that UNESCO should support the unification of copyright law in the international sphere and its perfection on a national basis. The final resolution to be submitted to the General Conference was as follows:

UNESCO should *with urgency*, and taking into account the existing conventions in this field,

(a) place on its agenda for immediate consideration the problem of perfecting the Universal Copyright Law.

(b) at the same time seek means for the protection of the moral and economic rights of the authors of literary, artistic, and scientific works; for the greater diffusion of scientific, cultural and educational materials and techniques; and for the confirmation of universal respect for justice, a rule of law, and the advancement of those freedoms essential to all.

(c) continue to disseminate, with these objectives in mind, all information concerning these matters through organizations national and international, governmental and non-governmental. Special attention should be called to one recommendation because of its deep significance; namely that of taking into account the existing conventions in this field, the Berne-Rome and the Washington Convention of 1946.²⁴

²⁴ Report of Working Party on Copyright to Second General Conference of UNESCO, p. 6.

The Principle of World Protection of Copyright

The work done has borne such fruit that we cannot be called the creators of a new movement. Rather must we build on the steadfast labors of those who have preceded us in this field. We must strengthen, consolidate and extend the sectors already won. When UNESCO achieves final victory in the battle for the universal extension of copyright an historic stage in the development of this field will be concluded. Working in coöperation with all of the organizations now in the field, as UNESCO is, we may look for that event sooner than most had dreamed possible.

The working out of a plan for a world convention was of paramount importance in the discussions of the working party and led to a major recommendation to the General Conference. One of the basic issues was whether the plan should envisage merely a continuation of the work already done, which leads to a unification of the two conventional systems; or whether the more difficult task should be undertaken, namely that of going beyond mere unification and making a basic detailed analysis of the diverse legislative measures already adopted at the municipal level.

Comparative law cannot be finally established by a comparison of individual acts of law. It requires preliminary investigation and a knowledge of the mutual relations of legal systems, with respect to the similarities and differences in basic ideas and technical expressions. Inquiry into the causes of the present state of the law should be based on such studies. A distinction must be made between "pure comparison" and "applied comparison." The first consists in contrasting the relations between legal bodies and their application from the points of view already mentioned; while the second involves a critical estimate of the content and application of these institutions in order to determine whether or not a comparison of national systems is possible.

All this bears on copyright, since comparison must be used in establishing international standards capable of acceptance by the governments of the different countries. Investigation of the shortcomings or omissions of national legal systems, the crucial points in the protection of copyright, will provide at the same time the answer as to whether or not they can be cured; whether the objections to the amendment of national legislation by international treaties are based upon superficial reasons or upon the innate necessities of the intellectual and economic climate of a country. It would be easy to prove, with appropriate statistics based on existing American systems of legislation, that the analogies are more numerous than the differences, and resemblances and similarities more frequent than opposition and contrast.

The comparative study of copyright systems should be extended to an examination of the European system in comparison with the inter-American system, not seeking to bring out the material and formal differences be-

tween the laws of the two continents but mainly to discover the points which could facilitate a world agreement. A basis will thus be laid down for the adoption of standard national rules for the drafting of international conventions conforming to this uniformity, either through mutual concessions or through the acceptance of conciliatory formulae, and avoiding the disadvantages and dangers of diversity in a field of law which is today, to a large extent, clearly international.

We must keep clearly before us that since the times of Roman Law, property has had two characteristics; *duration*, in principle, permanent, and *full enjoyment* of the object, although restrictions of a social nature have been growing steadily up to the present. On the other hand, what is called, somewhat inaccurately, "intellectual property," was by origin a public matter before it became a private matter through an act of legislation.

The course of events in English law is of great significance. In 1649, Milton expressed the idea of copyright for the first time, when he said that "the right to property in his work should be reserved to every author after his death, as during his life." In 1666, an English judgment confirmed "that copyright is a thing recognized in common law." The first legislative act, in 1709, gave the author "the sole right to print" his unpublished work during two terms of fourteen years, during his life-time, and the right to print and reprint his published works during a period of twenty-one years. Booksellers were fighting for the recognition of perpetual intellectual property based on common law. This theory was finally rejected by the most famous judgment in English copyright law, *Donaldson v. Beckett*.²⁵ It was then decided that the publication of a work put an end to its protection at common law. Since this time, the law referred to, with its fixed terms, was applied. This Act also introduced compulsory registration and deposit as the basis of copyright protection. This historical reminiscence can be the starting point for many interesting explanations with regard to the two problems of the duration and the content of copyright. Light may be thrown upon what Goldbaum called a strange thing: "Twenty-one States use, as one, the same system of establishing copyright [registration and deposit], without any previous agreement, reciprocal obligation and without evident historical motives."

Copyright has been no more than a collection of prerogatives defined by national legislation. Instead, it should be a general right, capable of including all the faculties of enjoyment and availability of the created work, and which by law should be restricted solely to what is indispensable for the economic and social evolution of the country.

The experience of existing organizations obtained in the practical realization of these rights, and full knowledge of the consequences not only of

²⁵ House of Lords, Feb. 22, 1774, [1774] 2 Brown P. C. 129; 1 Eng. Rep. (Reprint) 837.

over-strict or ambiguous laws but also of their faulty application or of ignorance of the doctrine to the needs of the author's life and its importance to the culture of the country, can provide us with valuable assistance. Worthy of note is the 92-page volume, published by the Juridical Division of the Pan American Union, entitled *Copyright Protection in the Americas under National Legislation and Inter-American Treaties*,²⁶ which contains a summary of the existing laws in twenty-one American Republics. This work states the formalities which must be complied with in each country to enjoy the benefits of the law, the classes of work which are protected, the period of duration of copyright, the cost of registration, and the degree of protection offered foreign works by each respective national system and by the Inter-American treaties and agreements in force.

For the Western Hemisphere it will be advisable to set up a joint commission for the promotion and development of comparative copyright, consisting of members of the Inter-American Academy of Comparative and International Law, the Inter-American Bar Association, the Inter-American Federation of Composers and Authors (FISAC), the Argentine Copyright Institute, and any other institutions which show interest in these studies. This commission will perform a joint task coördinated by the Inter-American Academy, which will also direct it. This work should not be limited to copyright in America. It should embrace the whole world; and for this purpose, the joint commission will invite coöperation in its work by Europeans selected by FISAC and other European institutions corresponding to the Academy and the Inter-American Bar Association.²⁷

After ample debate on this subject, in which the delegates of Poland, Switzerland, United States, Cuba, France, Belgium, the Philippine Republic and Canada took part, the working section unanimously reported to the General Conference the resolution proposed by Luther H. Evans of the United States delegation. The final text as submitted to the Conference is as follows:

That UNESCO undertake the study both comparative and critical of copyright problems and the fashion in which they have been solved in practice in the various nations, with the end in mind of improving international relations in this field and taking into consideration the possibility of a Universal Convention. The Secretariat shall cooperate closely with the United Nations in this effort.

That while exercising its functions in this field, the Secretariat shall maintain intimate contacts by all of the means at its disposal with the

²⁶ Pan American Union, Juridical Division, Law and Treaty Series, No. 16 (Washington, April, 1943).

²⁷ See, generally, the motion of Dr. Stephen P. Ladas at the Committee of Experts, Washington, 1946 (Pan American Union, Congress and Conference Series, No. 51); and motions by N. Chediak at the 3rd and 4th Inter-American Bar Association meetings, 1944 and 1945.

current activities and projects of the international organizations both governmental and private functioning in the field of copyright including participation in conferences; but that it shall observe strictest neutrality while making this study and undertake nothing binding in connection with any of the aforementioned activities.

That during these studies to be made scrupulous consideration will be taken of both legal rights and material necessities of the authors, the editors, the workers and the general public in all of the nations, and that UNESCO shall invite representatives of these groups to take part in all of the Committees, commissions, and meetings of experts.

It should only be added that this author took occasion in his *Comparative Copyright Law* to congratulate the Committee of Experts, which met in Paris, for its recommendations as to the method of formulating such a universal convention.

The final recommendation of the Conference reads as follows:

Unesco shall, with all possible speed and with due regard to existing agreements, consider the problem of improving Copyright on a world-wide basis.

The Director-General is instructed:

To arrange for a comparative and critical study of Copyright problems and of the ways in which they are solved in various countries and between countries, bearing in mind the purpose of furthering universal respect for justice and extending the rule of Law and the freedoms which are essential for all. He should throughout co-operate closely with the United Nations and should endeavor by all appropriate means to keep in touch with the current activities and accomplishments of the non-governmental and inter-governmental organizations dealing with Copyright, including the work of Conferences. In these activities he should remain entirely neutral and should avoid entering into any commitments.

To ensure that, in making these studies, the rights and needs of authors, publishers, workers and the public, in the widest meaning of the term, are carefully considered, and that Unesco invites representatives of these groups to take part in all Committees, Commissions, or meetings of experts.

To address to national and international, governmental and non-governmental organizations particularly concerned with Copyright, a questionnaire as broadly conceived and as practical as possible, in accordance with the recommendation expressed by the experts during their meeting of 15 to 20 September 1947. To keep the Member States of the United Nations and of Unesco regularly informed of the progress of this work by publishing an Information Bulletin for international circulation and by publicity in other specialized publications.

The General Conference recommends to Member States that they should invite the competent bodies under their control to coöperate closely with the Secretariat and that they should give such bodies all necessary facilities for this purpose.

Member States are requested to report to the Director-General on the

action taken in connection with the above resolutions, for the Third Session of the General Conference.²⁸

It was the feeling of the working section that various institutions which have been working toward a universal convention in this field should be consulted in the selection of the experts. Special mention was made of the Inter-American Bar Association and the Inter-American Academy of Comparative and International Law, as well as European institutions such as the International Association of Authors and Artists and the Rome Institute for Unification of Private Law.

It was resolved to have the Director General send out questionnaires to all interested groups, and that a special section in the Secretariat should be created at the seat of the organization to give all these projects administrative continuity.²⁹ When sufficient material had been collected, a Committee of Experts chosen from member nations of the United Nations and UNESCO should begin the actual work of organization for a report of the projected convention. This report should be ready for the attention of the Third General Conference so that, if possible, the convention might come into force in 1949. One of the main tasks of the committee would be the detailed examination and coördination of the material received. This would enable it to recommend a minimum body of copyright law which could be adopted universally.

In order to assure the effectiveness of this special Section a vote was taken in favor of a budget increase. This would facilitate the hiring of bi-lingual (Spanish-English) personnel, the employment of the highest caliber technical staff, and two divisions in the Committee of Experts. Use is to be made of the facilities of the CISAC and FISAC in reporting out the existing national legislation and the results of the committee's work will be given widespread publicity both through releases of UNESCO and other international reviews, especially *Droit d'Auteur*, the *Bulletin* of the Pan American Union and the *Inter-American Copyright Review* (FISAC).

The nature of the Second General Conference of UNESCO forbade the detailed technical consideration of many of the problems in the field of copyright law, but a real contribution was made in the establishment of those fundamental principles which will guide the program in 1948. The careful consideration of the topic left with the Conference a clear impression of the importance of this work. This awareness of the problem will speed the adoption of the universal convention on a sound, enduring basis. UNESCO will have the indisputable glory and honor of having brought this long struggle to fruition.

²⁸ UNESCO Doc. 2C/129 (Rev.), p. 16; Report of United States Delegation on Second Session, General Conference of UNESCO, Mexico City, Nov. 6-Dec. 3, 1947, Part II, Final Resolutions (Department of State Publication 3062, International Organization and Conference Series, IV, UNESCO 1), p. 104.

²⁹ Dr. Francois Hepp has been officially named Chief of the Section on Copyright

SITTING IN JUDGMENT ON THE ACTS OF ANOTHER GOVERNMENT

BY ARCHIBALD KING *

In the October, 1947, number of this JOURNAL¹ there was printed the judgment, or as we should say in the United States, the opinion, of the Court of Appeal of England in *Szalatnay-Stacho v. Fink*.² In the following number, that for January, 1948,³ there appeared an editorial comment on that case by Mr. Arthur K. Kuhn. The present writer begs leave to present certain additional reasons and precedents bearing upon the problem arising in the *Fink* case, namely, whether and to what degree an official of, or person working under, a government in exile, or an officer or employee of any foreign government, exercising his functions in another country with its consent, is liable to prosecution or suit in the courts of that country on account of his official acts. Though the governments in exile have returned home or ceased to operate, in the event of another war the phenomenon may recur. In any event, the increasing volume and complexity of international relations and the constantly closer ties between friendly nations make probable an increase in the number of officials of one country functioning permanently or temporarily in another with the latter's permission. Among these may be economic, financial, scientific, and military representatives, and all sorts of officers conferring or working with their "opposite numbers" in the host country. A detailed examination of the subject therefore seems timely.

The *Fink* case was a civil action for libel originally brought in the English Court of King's Bench. The opinion of the Court of Appeal thus summarizes the facts:

The plaintiff, a Czechoslovak citizen, was Acting Minister in Cairo under the Czechoslovak Government from 1934 to 1944. The alleged libel is contained in a document dated November 17, 1941, signed by the defendant, with documents attached, and sent to the Military office or Chancellery of the President of the Czechoslovak Republic. The defendant, who is also a Czechoslovak citizen, was at the material time Public or General Prosecutor of the Czechoslovak Military Court of Appeal (a position corresponding roughly with that of the British Judge Advocate-General).

* The author is a Colonel in the Judge Advocate General's Department, United States Army. The opinions herein expressed are his own and not necessarily those of the Department of the Army or of the Judge Advocate General.

¹ Vol. 41 (1947), p. 948.

² Announced June 5, 1946; reported in [1947] K. B. 1 and 62 T. L. R. 573. For convenience this case will hereafter be called the *Fink* case.

³ Vol. 42 (1948), p. 108.

The paper in question was marked confidential, and dated November 17, 1941, a time when, at the invitation of the British Government, the Government of Czechoslovakia was established in England. It was written and delivered in England. It begins:

The General Prosecutor received on several occasions information from members of the Czechoslovak Army in England regarding the activity of the Czechoslovak Envoy in Cairo, Dr. Szalatnay-Stacho. The above-named being a civil person, the General Prosecutor could not institute criminal proceedings and has therefore ordered administrative examinations of all persons who could elucidate the question.

The opinion further states that the document charged the plaintiff with treason, traffic with the enemy, and other serious offenses "in his official position as Acting Minister." The defendant had apparently been misled, as at the trial he made no contention that the charges were true. The defendant pleaded absolute privilege, and alternatively qualified privilege and the absence of malice.

In the judgments delivered in both the King's Bench Division and the Court of Appeal, the discussion was confined to these two points. In the former, Mr. Justice Henn Collins sustained both defenses. He pointed out that under English law, absolute privilege can be claimed for an official report only if made by one minister to another or to the sovereign, or in the course of military or naval duty.⁴ Therefore, if the case was to be decided according to the law of England, the place where the alleged tort was committed, there existed only a qualified privilege, i.e., the writer was protected if he acted without malice, and the court so found. Mr. Justice Henn Collins further found that under Czechoslovak law an absolute privilege would be allowed to the defendant; and that, as a matter of comity, Czech law should be applied. He said: "If the comity of nations is ever to be applied, it should surely be applied where the document in question was published in this country only because the foreign government, being our allies, were our guests while their unhappy country was occupied by our common enemy."

The Court of Appeal sustained the defense of qualified privilege, but disagreed with Mr. Justice Henn Collins as to absolute privilege. The Court, speaking through Lord Justice Somervell, said:

Having due regard to the exceptional position of the Czechoslovak Government we do not think that the principle of the comity of nations compels or entitles the Courts of this country to apply Czechoslovak law to acts done here in proceedings in tort between Czechoslovak

⁴ Among the authorities supporting the learned justice's statement are *Dawkins v. Lord Paulet*, L. R. [1869] 5 Q. B. 94; *Chatterton v. Secretary of State*, [1895] 2 Q. B. 189; and *Fraser on Libel and Slander*, p. 95. The writer naturally holds a high opinion of the service in which he has spent thirty of the best years of his life, but even he can see no logical reason why the armed forces should be so preferred over the civil branches of the government.

citizens, that law giving a general protection in civil suits to acts done by officials which is not afforded under our law. This would be to make an inroad on a very fundamental principle. If there is to be such an application of foreign law in the circumstances set out it would, in our opinion, have to be expressly provided for by legislation. We therefore decide that this document was not absolutely privileged. . . . In our opinion the principles of English law are applicable to a document produced and published in England.

In his comment⁵ Mr. Kuhn expressed surprise and regret that the Court of Appeal did not follow Mr. Justice Henn Collins in regarding the case as one in which, by the comity of nations, an absolute privilege should be recognized, and concluded that the court "has not adequately appraised the public interest and national policy of the allied governments during the war period."

As has been said, both courts before which the *Fink* case came, treated it merely as one of libel, and in their judgments discussed only whether and to what degree the defamatory document was privileged. This writer regrets that the learned justices sitting in those courts did not envisage the problem before them as one of a larger sort, namely, whether and under what circumstances the courts of one nation may sit in judgment on the acts of officers and employees of a friendly foreign country in the course of their employment.

There have been two other cases in the courts of the British Empire during World War II involving the same problem. Of these the first and the more important is *In re Amand*.⁶ That was an application for *habeas corpus* by a Dutch subject long resident in England who had been arrested by the police in London to be handed over to the Netherlands Army as a deserter or absentee without leave. Sir Donald Somervell, Attorney General of England, who appeared for the English Home Secretary, is the same distinguished lawyer who later as Lord Justice Somervell delivered the judgment of the Court of Appeal in the *Fink* case. Other counsel appeared for Amand and the Dutch Minister of Defense, respectively.

Amand had been summoned by Dutch officials in England to report to the colors. After unsuccessfully attempting to persuade them to give him time to wind up his business affairs, Amand reported as directed, put on the Dutch uniform, performed duty, drew pay, and his wife received an allowance from the Dutch Government. He applied for and received a

⁵ See note 3 *supra*.

⁶ [1942] 1 K. B. 445, and [1942] 1 All. Eng. Rep. 236. This case is reported on appeal in the Court of Appeal in [1942] 2 K. B. 26, and in the House of Lords in [1943] A. C. 147; but the opinions delivered in those tribunals dealt with the right to appeal and denied it, and mentioned only incidentally the question of international law involved in the case. An earlier application for *habeas corpus* by the same petitioner is reported in [1941] 2 K. B. 239. The *Amand* case is analyzed and discussed in Sir Arnold D. McNair, *Legal Effects of War* (Cambridge, University Press, 1944), p. 372 *et seq.*

brief leave of absence, from which he did not return, because, as he said, while on it he consulted a solicitor and became convinced that his induction was invalid. After Amand had joined the colors, but before he had overstayed his leave or applied for *habeas corpus*, the British Parliament passed an appropriate enabling statute and the King issued an order-in-council applying to the Dutch forces section 154 of the British Army Act authorizing the apprehension of deserters and absentees by the police. The Court of Appeal decided, with some hesitation, that it might examine the legal validity under Dutch law of the Dutch decree under which Amand was inducted. It did so, held that decree was lawful, and declined to order Amand's release.

The other case involving the investigation by a court of one country of the propriety of the official acts of personnel in the service of another is *Wright v. Cantrell*,⁷ a case arising in the Supreme Court of New South Wales in 1944. That was an action for libel and slander. Both parties were Australians working under the United States armed forces, the plaintiff a civilian sea captain, and the defendant an officer in the Australian Navy paid by the government of that country, but lent to the United States for duty in employing and discharging personnel of ships used by our armed forces. The defamatory words were used in line of duty. The factual similarity to the *Fink* case will be noted. After considering *The Schooner Exchange v. McFaddon*⁸ and many other authorities, the court denied the complete immunity of the visiting American forces to the Australian courts, but held that the host country must be deemed to waive in favor of the Allied Forces any provisions of its laws inconsistent with the purpose of their visit and to concede to its personnel all authority necessary to maintain discipline. It was held that it did not follow from these principles that the members of the visiting forces, or an Australian working under them, as was the defendant, were exempt from civil suit. The Supreme Court of Australia therefore rejected the defendant's claims of immunity to the jurisdiction and of absolute privilege, and remanded the case to the court below for trial, which resulted in favor of the defendant, though whether because of the existence of a qualified privilege, or because of the truth of the statements made by the defendant, this writer is not informed.

Let us consider whether these decisions, and particularly the latest of them, the *Fink* case, are sound from the standpoint of the rights which nations have against, and the duties which they owe to, each other.

In *The Schooner Exchange v. McFaddon*, Chief Justice Marshall, speaking for the Supreme Court of the United States said:

⁷ 44 State Reports N.S.W. 45, 61 Weekly Notes N.S.W. 38. This case is discussed in some detail by the present writer in this JOURNAL, Vol. 40 (1946), p. 266 *et seq.*

⁸ 7 Cranch 116. This case is discussed later in this article, and more fully by the present author in "Jurisdiction over Friendly Foreign Armed Forces," this JOURNAL, Vol. 36 (1942), p. 539.

This perfect equality and absolute independence of sovereigns, and this common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation.⁹

Marshall next mentioned three cases in which every sovereign is understood to waive his territorial jurisdiction: first, over the person of a visiting sovereign; second, over an ambassador or minister; and, third, over friendly foreign troops permitted by the local sovereign to pass through his dominions.¹⁰ With respect to the third case, the great Chief Justice said:

In such case, without any express declaration waiving jurisdiction over the army to which this right of passage has been granted, the sovereign who should attempt to exercise it would certainly be considered as violating his faith. By exercising it, the purpose for which the free passage was granted would be defeated, and a portion of the military force of a foreign independent nation would be diverted from those national objects and duties to which it was applicable, and would be withdrawn from the control of the sovereign whose power and whose safety might greatly depend on retaining the exclusive command and disposition of this force. The grant of a free passage, therefore, implies a waiver of all jurisdiction over the troops, during their passage, and permits the foreign general to use that discipline, and to inflict those punishments which the government of his army may require.¹¹

Marshall mentioned only three cases in which jurisdiction is waived by the local sovereign, presumably because those were the only ones of which he knew; but it is illogical to suppose that his list is exhaustive. The inference is justifiable that, if he had known of other cases to which the same considerations applied, he would have reached the same conclusion respecting them.

One such case, which has arisen since Marshall's day, is that of judges of international tribunals. This was recognized nearly twenty years ago

⁹ 7 Cranch 137.

¹⁰ Marshall's third case is considered in detail in two articles by this author in this JOURNAL, one in Vol. 36 (1942), p. 539, and the other in Vol. 40 (1946), p. 257. The immunity of a visiting sovereign and of an ambassador to the local jurisdiction is too well settled to require the citation of authority. It should not be supposed that the doctrine laid down by Marshall as to the third case rests on his authority alone, high as that is. The same position is taken by the leading writers on international law of many nations and by the Judicial Committee of the Privy Council, the highest tribunal of the British Empire, in *Chung Chi Cheung v. The King*, [1939] A. C. 160. The authorities are collected in the article cited in note 8, *supra*. To those there mentioned may be added an 18th-century Italian writer, Casaregis, *Discursus Legales de Commercio*, Discursus 136, par. 9.

¹¹ 7 Cranch 139.

by so distinguished an international lawyer as Sir Cecil Hurst,¹² who then pointed out,¹³ that the arbitration treaties signed at the Hague Conferences of 1899¹⁴ and 1907¹⁵ and the Statute of the Permanent Court of International Justice¹⁶ all provided for the immunity of the arbitrators or judges to the local jurisdiction. Sir Cecil went on to say, with respect to such an officer and the nations which are parties to the dispute before him:

To perform his task properly he should be in a position to hold the balance evenly between them and must stand in a position of independence as regards both of them. . . . In these days a government would be thought to be acting contrary to the practice now obtaining among states if it attempted to subject to its own jurisdiction a member of an international tribunal who happened while engaged in the execution of his duties to be physically present within its territory.¹⁷

The grant of immunity in the Covenant of the League of Nations had its origin in a draft proposed by Lord Robert Cecil of the British Delegation at the Paris Peace Conference of 1919.¹⁸ The Statute of the International Court of Justice reproduces the article which had previously appeared in the Statute of the Permanent Court, and provides that the members of the International Court of Justice, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.¹⁹

Two other cases may be considered together. The first is that of representatives of nations at international conferences or at the headquarters of international organizations such as the Pan American Union, the League of Nations, or the United Nations. Lord Birkenhead, formerly Lord Chancellor of England, said that diplomatic prerogatives should in general be accorded to such persons.²⁰ The other case is that of officers of the League of Nations, the United Nations, or other international bodies. The Covenant of the League of Nations provided that both classes of persons mentioned above in this paragraph should enjoy diplomatic immunities.²¹

¹² Formerly Legal Adviser to the British Foreign Office and President of the Permanent Court of International Justice.

¹³ "Diplomatic Immunities—Modern Developments," in *British Year Book of International Law*, 1929, pp. 1, 6.

¹⁴ Hague Convention for the Pacific Settlement of International Disputes (1899), Art. 24; Malloy, *Treaties and Other International Acts*, Vol. II, p. 2025; 82 Stat. 1791.

¹⁵ Hague Convention No. I for the Pacific Settlement of International Disputes (1907), Art. 46; Malloy, *op. cit.*, Vol. II, p. 2236; 36 Stat. 2224.

¹⁶ Art. 19.

¹⁷ Hurst, *op. cit.*, pp. 7 and 8.

¹⁸ C. Van Vollenhoven, "Diplomatic Prerogatives of Non-Diplomats," this JOURNAL, Vol. 19 (1925), pp. 469, 470; Ray Stannard Baker, *Woodrow Wilson and the World Settlement*, Vol. III, p. 134.

¹⁹ Statute of the International Court of Justice, Art. 19.

²⁰ *International Law* (6th ed.), p. 65. See also Eagleton, "Protection of Foreign Officials," this JOURNAL, Vol. 19 (1925), pp. 293, 312.

²¹ Art. 7, sec. 4.

The Charter of the United Nations does not go so far, but provides that all such persons shall enjoy "such privileges and immunities as are necessary for the independent exercise of their functions in connection with the organization."²²

The privileges and immunities of persons within the two classes last mentioned, i.e., representatives of nations at the headquarters of international organizations and the officers and employees of such organizations, have been the subject of statutes and executive orders in several nations. Among these may be mentioned Canadian²³ and Chinese²⁴ executive orders and British²⁵ and American²⁶ statutes implemented by such orders.

In neither Great Britain nor the United States does the legislation grant by reference such privileges and immunities as diplomatic envoys enjoy. In both it concedes certain enumerated and defined rights. In Great Britain the rights allowed are broader than in the United States, but the beneficiaries are restricted in Britain to a small group of the higher personnel. Among the exemptions expressly granted in Great Britain to officers of the United Nations and to representatives of its members is immunity from legal process of every kind in respect of words spoken or written or acts done by them in their official capacities.²⁷

The foregoing survey shows that, in addition to the three cases enumerated by Marshall, there are at least three more in which nations customarily waive their jurisdiction over certain persons within their borders. The fact that the waiver has not always been made and is sometimes incomplete does not militate against the general truth of the statement. If, in still other cases, the reasons exist which have led nations to waive their jurisdiction in the six cases mentioned, ought not the like waiver again to be made? Furthermore, if, in these other cases, the host nation has without express claim of jurisdiction admitted persons with respect to whom, for the reasons given by Marshall, a waiver ought to be implied, may not the courts imply a waiver, just as Marshall implied one by the United States with respect to jurisdiction over *The Exchange*? In other

²² Art. 105, sec. 2. There is a voluminous literature on this subject. See Josef L. Kunz, "Privileges and Immunities of International Organizations," this JOURNAL, Vol. 41 (1947), p. 828, especially note 13, p. 830.

²³ Treaties of Peace (Status of the International Labour Office) Order, Aug. 14, 1941. For this citation, that in the following note, and much other information on this topic, the present author is indebted to Professor Lawrence Preuss, "The International Organizations Immunities Act," this JOURNAL, Vol. 40 (1946), p. 332 *et seq.*

²⁴ *Official Gazette* of the Executive Yuan, Vol. VI, No. 3, Feb. 19, 1943.

²⁵ Diplomatic Privileges (Extension) Acts, 1944, 7 and 8 Geo. 6, c. 44, this JOURNAL, Vol. 39 (1945), Supp., p. 163; and 1946, 9 and 10 Geo. 6, c. 66; Statutory Rules and Orders, 1945, Nos. 79, 84, 1211, 1539, 1638, 1639; S. R. & O., 1946, 895 and 1202; S. R. & O., 1947, 1772. See also Egon Schwelb, in *Modern Law Review*, Vol. 8, p. 50.

²⁶ Act of Dec. 29, 1945, 59 Stat. 669, 22 U. S. Code 288 *et seq.*, this JOURNAL, Vol. 40 (1946), Supp., p. 85; Executive Orders 9698, 9751, 9823, 9863, 9887.

²⁷ Statutory Rules and Orders, 1947, No. 1772.

words, if a new case arises, not mentioned by Marshall, but in principle like those which he did mention, ought not the courts to do now what he did then, namely, imply a waiver of jurisdiction? It is submitted that the situation presented in the *Fink* and *Amand* decisions is such a case, and that the foregoing questions ought to be answered in the affirmative.

The *Fink* and *Amand* cases involve the rights and obligations with respect to each other of exiled governments and their officials on the one hand and the nation in which they have found an asylum on the other. Chief Justice Marshall enumerated three reasons which have impelled nations to waive their territorial jurisdiction over the three classes of persons which he mentioned. Let us test the case of the officers of a government in exile, to see whether it is in principle like the three which he discussed, by inquiring whether Marshall's three reasons are applicable to it.

The first of the reasons which Marshall says have led nations to waive a portion of their territorial jurisdiction in three cases is the "perfect equality and absolute independence of sovereigns."²⁸ *Par in parem non habet imperium*. There is no principle of international law more fundamental or more universally accepted than this. The host sovereign does not exercise jurisdiction over the visiting sovereign himself, his ambassador, or his troops, because to do so would be inconsistent with the latter's equality and an invasion of his independence. Is this reason applicable to the personnel of a government in exile? Great Britain invited Czechoslovakia and The Netherlands to set themselves up on its soil as sovereign governments. It invited the President of Czechoslovakia, the Queen of The Netherlands, and the officials and employees of their governments from the highest to the lowest to enter and function as such, not merely to come in as unfortunate individual refugees. The governments of the two countries were set up in England, operated there as such, and were recognized as such by the British Foreign Office.²⁹ It is inconsistent with the "perfect equality" of the British, Czech, and Dutch governments, an equality which persisted in law notwithstanding the military defeat and exile of the last two, for officers of the two latter governments to be haled into a court of the King of Great Britain and to be required to justify their conduct in the service of their own sovereigns to the judge of that court. It is also inconsistent with the "absolute independence" of Czechoslovakia and The Netherlands, an independence which persisted notwithstanding the misfortunes which had befallen those nations, for its officers to be obliged to justify their official acts in the court of another country, at the risk of having to pay damages out of their own pockets if their reasons for such acts should fail to satisfy the foreign judge or jury. Such a liability is inconsistent with independence.

²⁸ 7 Cranch 137.

²⁹ It was expressly so stated at the trial of both the *Amand* and the *Fink* cases by the Attorney General of England.

The second reason which Marshall mentions as having led nations to waive their territorial jurisdiction over the three classes of persons whom he enumerates, is the common interest of sovereigns "impelling them to mutual intercourse and an interchange of good offices with each other."⁸⁰ The sovereign who is now the host may later wish to go visiting, or to send an ambassador or his own troops to another country. In such event, he will desire exemption from the local jurisdiction for himself, his ambassador, and his troops. If he now refuses such exemption, he cannot expect it to be accorded when the situation is reversed.

Is the above reason, the desire for reciprocal treatment, applicable to officers of governments in exile? This writer earnestly hopes that no British government may ever be driven into exile, but the margin by which that misfortune was avoided in the second World War was too close for comfort. If that should ever happen, which God forbid, the British Government would certainly not want its officers to be sued on account of their official acts in the courts of the country in which they had taken refuge. Burma, the Straits Settlement, Borneo, and Hong Kong, then parts of the British Empire, were occupied by the enemy during World War II; as were the Channel Islands, those unique remnants of William the Conqueror's Duchy of Normandy. If the Government of Hong Kong, with the consent of China, had withdrawn into the interior of that country and continued to function there, it seems certain that its governor would have protested vigorously if one of his subordinates had been sued in a Chinese court on account of his official acts. The point may be pressed further. The operation of a government in exile is by no means the only activity of one country conducted on the soil of another. The commonest of such is the maintenance of embassies and consulates. The land and buildings of an embassy are not exempt from the jurisdiction of the country in which they lie. Though they may be entered only with the ambassador's permission, one who commits a crime therein may be tried and punished by the local courts, if not protected by personal diplomatic immunity or if that immunity be waived.⁸¹ Also an ambassador loses his personal diplomatic immunity when he ceases to be such. Would it be held that a former ambassador to England, who happened to be in that country, could be sued in an English court by a former member of his staff on account of remarks alleged to be libelous in an official report by the ambassador to his own foreign office? The decision in the *Fink* case would seem to require an affirmative answer. If so, pursuant to the doctrine of the equality of nations, an ex-ambassador of Great Britain to another country would be suable in its courts in like circumstances. The hypo-

⁸⁰ 7 Cranch 137.

⁸¹ Westlake, *International Law* (2d ed.), Vol. I, p. 273; Oppenheim, *International Law* (6th ed.), Vol. I, p. 714; Sir Ernest Satow, *Diplomatic Practice* (3d ed., 1932), Ch. XVII; John W. Foster, *The Practice of Diplomacy*, Ch. VIII.

thetical case may be changed to that of a consul, who never has diplomatic immunity, being sued by one of his clerks in a court of the country where he is stationed for libel on account of derogatory statements about the clerk made in an official report.

The foregoing considerations indicate that the second reason given by Chief Justice Marshall for the waiver of jurisdiction, *i.e.*, desire for reciprocal treatment, is, or at any rate may be, applicable to the case of the personnel of governments in exile and other officials of one nation stationed by the consent of another on the latter's soil.

The third reason which Marshall gave for the waiver by a sovereign of his territorial jurisdiction over the three classes of persons whom he mentioned is shown by his statements that an ambassador "would be less competent to the objects of the mission" if he did not enjoy immunity, and that his privileges are "essential . . . to the duties he is bound to perform."³² Elsewhere he says that if local jurisdiction were exercised over the troops of a friendly foreign Power, "the purpose for which the free passage was granted would be defeated."³³ As has been said, the grant of permission to a foreign sovereign, ambassador, or troops to enter the territory of another country means that they are to enter, not merely as private individuals, but as sovereign, ambassador, or troops of their own country, respectively. They cannot properly discharge their functions in those capacities if they are subject to the local jurisdiction. All this is merely an application to other situations of a principle with which the name of Marshall will be forever associated, the doctrine of implied powers, which is that "that which was reasonably appropriate and relevant to the exercise of a granted power was to be considered as accompanying the grant."³⁴

Let us see if this doctrine is also applicable to the situation which we are now examining. The Czech and Dutch governments entered Britain, not as the schooner *Exchange* entered the port of Philadelphia, under an implied permission of the host government, but in response to an express invitation. That invitation, it should be emphasized, was for them to enter and operate on British soil as governments. Pursuant to the doctrine of implied powers, the grant by Great Britain to Czechoslovakia and The Netherlands of permission for their President and Queen, respectively, and other officers, to enter, set up, and operate governments, clearly implied a grant of immunity from British interference in the operation of

³² 7 Cranch 139.

³³ 7 Cranch 137.

³⁴ *Marshall v. Gordon*, 243 U. S. 521, 537; *McCulloch v. Maryland*, 4 Wheaton 316. For recognition of the doctrine of implied powers by English authorities, see *Kielley v. Carson*, 4 Moore P. C. 63, 88; *Clarence Ry. Co. v. Great North Ry. Co.*, 13 Meeson and Welsby 706, 719; 2 Blackstone's *Commentaries* 36; Broom's *Legal Maxims* (10th ed.), p. 309. These authorities are discussed on p. 548 of this author's article cited in note 8, *supra*.

those governments, since otherwise they would not have that independence, which, as has been said, is an essential characteristic of governments, and without which they cannot function effectively as such. Marshall's third reason for waiver of jurisdiction is therefore applicable to the case of officers and employees of exiled governments, or any other governments, functioning on the soil of another nation with the latter's consent.

The discussion to this point may be thus summarized: Chief Justice Marshall, in his opinion in the case of *The Schooner Exchange*,³⁵ gave three reasons as those which have led sovereigns to waive their territorial jurisdiction in the three cases mentioned by him. Those three reasons are: first, the equality and independence of sovereigns; second, the desire for reciprocal treatment; and, third, the doctrine of implied powers. All three reasons are also applicable to the case under examination, that of officials of an exiled government, or of any government, established and functioning in a friendly foreign country with the latter's consent. Immunity from the jurisdiction should therefore be granted expressly by the host country; or, if not so granted and not specifically withheld, it should be implied.

The validity of the above arguments appears to have been recognized in principle by Great Britain in the passage of the Diplomatic Privileges (Extension) Act, 1941,³⁶ which provides that "while any person is recognized by His Majesty to be a member of the government of any foreign Power . . . allied with His Majesty and established in the United Kingdom, . . . that person shall be treated as if he were . . . an envoy, and his official staff . . . as if they were his retinue." The Act goes on to say that, in order to enjoy its benefits, a person employed on the staff of a member of an Allied Government must be recognized by His Majesty as performing duties no less responsible than those of diplomatic secretary and his name must be borne on a list to be prepared by the Secretary of State. It is supposed that the words "member of the government" in the above statute are used in the British sense, as meaning one of the principal ministers.

It is surprising to find that the above statute is nowhere mentioned in reports of the arguments of counsel or the opinions of the justices in either the *Amand* or the *Fink* case, though those cases arose after its passage. It may be that the position of the defendant Fink was not thought to be sufficiently high to bring him within the scope of the Act. In the *Amand* case, counsel appeared severally for the applicant for the writ of *habeas corpus*, the British Home Secretary, and the Dutch Minister of Defense, from which it might be inferred that the two latter were respondents. The Dutch Minister of Defense was certainly entitled to the benefit of the statute if he was a respondent; but, as Amand was ar-

³⁵ 7 Cranch 137 *et seq.*

³⁶ 4 and 5 Geo. 6, c. 7, enacted March 6, 1941.

rested by the London police, the Home Secretary may have been the sole respondent of record and the Dutch Minister may have intervened voluntarily, or the latter for reasons of policy may have instructed his counsel not to claim the statutory immunity.

The present writer does not contend that a subordinate official of a government in exile, or of any foreign government, exercising his functions in another country with its consent, has as a matter of law, or ought to have, the complete immunity from the local jurisdiction enjoyed by a visiting sovereign or an ambassador. It is well settled by customary international law that a consul has no such extensive exemption. But, for the reasons already set forth, a consul, an official of a government in exile, or any other officer or employee of a foreign country ought at least to have immunity from prosecution or suit in the local courts on account of his official acts.

This suggests another and perhaps more accurate way of stating the applicable principle, namely, that the immunity attaches, not to the officer, but to his official acts; or, to approach the problem from the opposite direction, that the local courts are disqualified from investigating his official acts. There is ample judicial authority for this statement. The leading case is *Underhill v. Hernandez*.³⁷ The defendant was a general in Venezuela, who, at the head of a revolutionary army, entered the city of Bolivar on August 13, 1892, and found the waterworks under the charge of an American named Underhill, who asked leave to depart. This was refused until October 18, 1892, presumably because General Hernandez desired Underhill to keep on operating the waterworks for the benefit of his army and the people of the town. Later the revolutionary government was recognized by the United States. Still later, when both Underhill and Hernandez were in New York, the former brought suit against the latter there for damages on account of his detention and affronts which he had suffered. The Supreme Court of the United States decided in favor of the defendant, because "the courts of one country will not sit in judgment on the acts of another done within its own territory."³⁸ The court further said that the application of this principle was not confined to lawful or recognized governments, but extended to governments ruling by force as a matter of fact.

If the quotation in the preceding paragraph be literally construed, it does not apply to the cases which we are now considering, because the acts of the other government were not done within its territory. Chief Justice Fuller was, however, thinking of the case before him, in which the official acts of General Hernandez, a Venezuelan officer, were performed within the territory of that nation; and probably the case did not occur to him, rare now but rarer then, of an official act of an officer of one government

³⁷ 168 U. S. 250; Moore's *Digest of International Law*, Vol. II, p. 30.

³⁸ 168 U. S. 252.

done within the territory of another. To cover all cases logically within the scope of the principle enunciated in the passage quoted, the word "territory" should be replaced by "jurisdiction"; and, as will be shown, that substitution is made in later English cases.

The American case next most frequently cited to this point is *Oetjen v. Central Leather Company*,³⁹ an action of replevin for leather. Plaintiff was receiver of a partnership in Torreón, Mexico, the former owners of the leather, which was seized by General Villa as a military contribution when he captured that city, and sold by him to the defendants, who took it to the United States. Villa was at the time of the seizure serving under the revolutionary General Carranza, who later succeeded in overthrowing the existing government and was recognized by the United States. The Supreme Court of the United States quoted the passage about "sitting in judgment" on the acts of another nation from its earlier decision in the *Underhill* case and went on to say that to do so would "imperil the amicable relations between governments and vex the peace of nations."⁴⁰ The court therefore declined to go into the validity of General Villa's taking of the leather and decided in favor of the defendants.⁴¹

The two cases above summarized are the leading cases in the courts of the United States, but the doctrine which was so well expressed in them is much older. In 1797, in the first volume of the *Opinions of the Attorney General*, are two opinions to the same effect. In the earlier of them, it is stated that Governor Collot, of the French colony of Guadeloupe, while in the United States, was sued in a civil action based on his seizure and condemnation of a vessel as governor. He declined to plead and applied to the French Minister at Washington, who asked the Government of the United States to stop the action. Attorney General Bradford said that the governor was not personally privileged; but that, if his act was official, that was a sufficient answer for any irregularity. "The extent of his authority can, with propriety or convenience, be determined only by the constituted authorities of his own nation."⁴² In another case the same year Attorney General Lee said: "A person acting under a commission from the sovereign of a foreign nation is not amenable for what he does

³⁹ 246 U. S. 297.

⁴⁰ 246 U. S. 303, 304.

⁴¹ The decision is the more noteworthy because, if they had felt any doubt about the law, the judges might have unconsciously been led by their feelings to decide it the other way. It must have been a painful duty to uphold the act of Villa, the man who, in 1916, after the seizure of Martinez & Co.'s leather, but before the hearing of this case, attacked Columbus, New Mexico, killed several civilians and soldiers, and touched off General Pershing's punitive expedition and the calling out of the entire National Guard of the United States, including this writer as a non-commissioned officer, to guard the Mexican border.

⁴² 1 Ops. Atty. Gen. 45; Moore's *Digest of International Law*, Vol. II, p. 23.

in pursuance of his commission to any judiciary tribunal in the United States."⁴³

The earliest American judicial opinion in point is one by our greatest judge and first authority on international law, the illustrious Marshall. In *Hudson v. Guestier*,⁴⁴ the question at issue was the validity of a condemnation as prize. The vessel had been captured by the French and taken into Santiago de Cuba, a Spanish port, but remained in French possession there. While there, she was adjudged lawful prize by a French court sitting at Guadeloupe. Marshall said: "The sovereign power possessing jurisdiction over the thing must be presumed by foreign tribunals to have exercised that jurisdiction properly."⁴⁵ Since the French authorities held physical possession of the ship, even though she was in the port of another country, the French decree might not be questioned in a foreign court. In that case, as in the one which we are examining, one nation was exercising power within the territory of another, presumably with the latter's consent, and the validity of its acts was held absolute.

In a more recent case, *Hewitt v. Speyer*,⁴⁶ the doctrine was thus forcibly stated:

We take the principle to be incontrovertible . . . , that our courts, not only will not adjudicate upon the validity of the acts of a foreign nation performed in its sovereign capacity, but also that persons involved in the performance of such acts can not be subjected to a civil liability therefor.

The latest case in point is *Bernstein v. Van Heyghen Frères, S. A.*⁴⁷ The plaintiff was a Jew, who held all the shares of a German corporation which owned a ship. The Nazi Government put him in jail and by duress forced him to convey all his property to a trustee, which sold the ship to the defendant, a Belgian corporation. The ship was lost, but the defendant collected insurance. The plaintiff obtained an attachment against another Belgian corporation doing business in New York and owing money to the defendant. Here again, the court no doubt would have preferred to decide the case in favor of the unfortunate and oppressed plaintiff, but a majority held for the defendant, saying:

We have repeatedly declared, for over a period of at least thirty years, that a court of the forum will not undertake to pass upon the validity under the municipal law of another state of the acts of officials of that state, purporting to act as such.⁴⁸

⁴³ 1 Ops. Atty. Gen. 81; Moore's *Digest of International Law*, Vol. II, p. 24.

⁴⁴ 4 Cranch 293.

⁴⁵ *Ibid.*, p. 294.

⁴⁶ 250 Fed. 367, 371 (C.C.A. 2, 1918); Hackworth, *Digest of International Law*, Vol. II, p. 18.

⁴⁷ 163 Fed. 2d 246 (C.C.A. 2, 1947); certiorari denied Oct. 18, 1947, 332 U. S. 772.

⁴⁸ 163 Fed. 2d 246, at p. 249.

There are so many more American authorities to the same effect⁴⁹ that the principle stated in the above quotations must be regarded as settled law in the United States.

The *Fink* and the *Amand* cases, considered above, were both decided in English courts. This writer is aware that the decisions of the courts of the United States which he has cited in the preceding paragraphs are not binding precedents in England; but he will show that the leading cases among them have been quoted with approval by high English tribunals, and that the doctrine which they announce had its origin in England at a far earlier date.

The oldest English case is *Blad v. Bamfield*,⁵⁰ in 1674. Blad, a Dane, in England at the time of filing his bill in equity, prayed an injunction against actions at law against him by various Englishmen because he had seized goods of theirs in Iceland. He admitted the seizures; but justified them by a patent of the King of Denmark, sovereign of Iceland, giving him the exclusive right to trade in that island, a Danish sentence of condemnation of the goods seized, confirmation of that sentence by the Chancellor of Denmark, execution of the sentence, and payment of two thirds of the value of the goods to the King of Denmark. Here again, an English chancellor would, if he could, no doubt have preferred to decide in favor of his countrymen and against a foreign monopolist; but Lord Nottingham apparently thought the case clear, and gave the complainant a permanent injunction, saying:

Now, after all this, to send it to a trial at law, where either the Court must pretend to judge of the validity of the king's letters patent in Denmark, or of the exposition and meaning of the articles of peace; or that a common jury should try whether the English have a right to trade in Iceland, is monstrous and absurd.⁵¹

Lord Nottingham realized nearly three hundred years ago what is evident today, that for an Anglo-Saxon judge to decide between two con-

⁴⁹ *American Banana Company v. United Fruit Co.*, 213, U. S. 347, 357, per Holmes, J.; *Ricaud v. American Metal Co.*, 246 U. S. 304; *Texas Co. v. Hogarth Shipping Co.*, 256 U. S. 619; *U. S. v. Belmont*, 301 U. S. 324, 327; *U. S. v. Pink*, 315 U. S. 203, 233; *The Adriatic*, 258 Fed. 902, 904 (C.C.A. 3, 1919); *The Claveresk*, 264 Fed. 276, 281 (C.C.A. 2, 1920); *Heine v. New York Life Insurance Co.*, 50 Fed. 2d 382, 386 (C.C.A. 9, 1931); *Banco de España v. Fed. Reserve Bank*, 114 Fed. 2d 438, 443 (C.C.A. 2, 1940); *U. S. ex rel. Steinworth v. Watkins*, 159 Fed. 2d 50 (C.C.A. 2, 1947); *U. S. ex rel. von Heymann v. Watkins*, 159 Fed. 2d 650 (C.C.A. 2, 1947); *Eastern States Petroleum Co. v. Asiatic Petroleum Co.*, 28 Fed. Supp. 279, 281 (S. D. N. Y. 1939); *Medvedieff v. Cities Service Oil Co.*, 35 Fed. Supp. 999, 1001 (S. D. N. Y. 1940); *The Manuel Arnus*, 51 Fed. Supp. 577, 578 (S. D. Texas 1943); *Anderson v. N. V. Transandine Handelsmaatschappij*, 28 N. Y. Supp. 2d 547 (validity of decree of Dutch Government in exile recognized); Hyde, *International Law* (2d ed.), Vol. I, p. 734; *Boitchenko v. Parker*, Hackworth, *Digest of International Law*, Vol. II, p. 472.

⁵⁰ 3 Swanston 604.

⁵¹ *Ibid.*, p. 607.

flicting views of what is the law of a country having another system of jurisprudence, is a difficult and sometimes an almost impossible job. Nevertheless, it must sometimes be attempted in private litigation; but the extreme difficulty of the task is another reason, added to those based on policy and international law, against undertaking it if it can be avoided.

The next case to which attention is invited is *A. M. Luther Company v. Sagor*,⁵² in the Court of Appeal. In 1918 the Russian Soviet Federated Socialist Republic passed a decree confiscating sawmills and woodworking establishments and their assets. The plaintiff was a Russian corporation having a sawmill in that country and certain plywood stored in or near it. In 1920 a representative of the Russian commercial delegation in England made a contract with the defendants selling them certain wood, which was carried out. The plaintiff said certain marks showed that the wood so sold and then in the possession of the defendants was the identical plywood formerly stored at its mill and confiscated. Lord Justice Warrington said:

It is well settled that the validity of the acts of an independent country in relation to property and persons within its jurisdiction can not be questioned in the courts of this country.⁵³

The substitution of "jurisdiction" by Lord Justice Warrington in the above case for "territory," the word used by Chief Justice Fuller in the *Underhill* case,⁵⁴ will be noted. The learned justice also quoted with approval the passage already quoted herein,⁵⁵ that the courts of one country will not sit in judgment on the acts of the government of another; but he wrongly attributed it to Justice Clarke of the Supreme Court of the United States in *Oetjen v. Central Leather Company*,⁵⁶ when in truth that judge merely quoted it from the earlier opinion of Chief Justice Fuller of the same court in *Underhill v. Hernandez*.⁵⁷ The court upheld the Russian confiscatory decree and decided in favor of the defendants.

In *The Jupiter No. 3*,⁵⁸ Hill, J., sitting in the King's Bench Division, adopted as his own without quotation marks the statement of the Supreme Court of the United States⁵⁹ that the courts of one country will not sit in judgment on the acts of another done within its territory. In that case and in *Frankfurter v. W. L. Exner, Ltd.*,⁶⁰ the court refused to sustain a confiscatory decree because the *res* was outside the jurisdiction or possession of the sovereign by whose authority the decree was issued.

⁵² [1921] 3 K. B. 532.

⁵³ *Ibid.*, p. 548.

⁵⁴ 168 U. S. 250, 252; *ante*, p. 822.

⁵⁵ *Ante*, p. 822.

⁵⁶ 246 U. S. 297.

⁵⁷ 168 U. S. 250, 252.

⁵⁸ [1927] P. 122, 141.

⁵⁹ In *Underhill v. Hernandez*, 168 U. S. 250, 252.

⁶⁰ [1947] Ch. 629.

In *Princess Paley v. Weisz*,⁶¹ in the Court of Appeal, the Russian revolutionaries in 1918 had confiscated the plaintiff's palace and its contents, and made it a state museum. Later the Soviet Government was recognized by Great Britain. The court held that this confiscation was an act of state, which must be recognized even if contrary to British ideas, and two of the lord justices quoted with approval the statement by the Supreme Court of the United States that the courts of one country will not sit in judgment on the acts of another in its own territory, but again erroneously attributed that statement to the *Oetjen* case⁶² instead of the *Underhill* case.⁶³

In deciding both of *Amand*'s applications for *habeas corpus*,⁶⁴ the English courts quoted with approval the rule laid down by the Supreme Court of the United States against sitting in judgment on the acts of another country, though they again erred in citing the *Oetjen*⁶⁵ rather than the *Underhill*⁶⁶ case as the source of the rule, and though they declined to apply the rule to the case before them. In the second *Amand* case, Cassels, J., said: "It is well settled that the courts of this country can not question the validity of the acts of an independent sovereign government in relation to property and persons within its jurisdiction."⁶⁷ It is again to be noted that the learned judge substituted "jurisdiction" for "territory," the word used by the Supreme Court of the United States.⁶⁸

There are other English authorities to the same effect as those above summarized.⁶⁹ It therefore appears that there was, at the date of the *Amand* and *Fink* decisions, ample English authority for the doctrine that the courts of one nation will not sit in judgment on the acts of another.

Were those cases proper occasions for the application of that principle? Let us first consider the *Amand* case.⁷⁰ Though they finally decided that those acts were lawful and valid, there can be no doubt that in that case the English courts did sit in judgment on the acts of the Dutch Government in passing the decree which authorized his induction and in inducting him into the Dutch military service. The Lords Justices of the Court of Appeal, to justify their action in so doing, pointed out that before his induction *Amand* had lived in England for several years, and said that he was there-

⁶¹ [1929] 1 K. B. 718.

⁶² 246 U. S. 297, 303.

⁶³ 168 U. S. 250, 252.

⁶⁴ [1941] 2 K. B. 239, 253; [1942] 1 K. B. 445, 449, 451.

⁶⁵ 246 U. S. 297, 303.

⁶⁶ 168 U. S. 250, 252.

⁶⁷ [1942] 1 K. B. 453.

⁶⁸ In *Underhill v. Hernandez*, 168 U. S. 250, 252.

⁶⁹ *Dobree v. Napier*, 2 Bing. N. C. 781; *Republic of Peru v. Dreyfus*, 38 Ch. D. 348; *Carr v. Francis Times & Co.*, [1902] A. C. 176; *Compañía Naviera Vascongada v. The Cristina*, [1938] A. C. 485; *Lorentsen v. Lydden and Company*, [1942] 2 K. B. 202; Pollock on *Torts* (14th ed.), p. 92.

⁷⁰ [1941] 2 K. B. 239; [1942] 1 K. B. 445.

fore entitled to the protection of the King of England and his courts against wrongful induction. But the test whether the act of another government is to be accepted as valid is whether that government had jurisdiction; and, under the law of both The Netherlands and England, jurisdiction over Amand for purposes of induction depended, not on his domicile, but on his nationality, and that was Dutch.

The argument of the justices would have been stronger if Amand had applied to an English court for an injunction when summoned to the colors; or had refused to respond to the summons, been arrested for failing to do so, and had then asked for the writ of *habeas corpus*. Instead, his first objections to entering the Dutch military service were not based upon any illegality in his induction, but were mere requests for delay in order to settle his business affairs. Without any physical compulsion he reported at a Dutch training camp August 20, 1940, put on the Dutch uniform, did duty as a soldier, drew pay, and his wife drew a separation allowance until January 30, 1941, when he went on seven days' leave, from which he did not return. During all this time he was a soldier *de facto*, whether or not under Dutch law he was one *de iure*. He was clearly guilty of laches. Would a Dutchman, enlisted or inducted into the Dutch Army in his own country, serving in England five months later, be heard by an English court on an application for *habeas corpus* to question the legality of his enlistment or induction? It is believed that that ought not to be allowed. No valid distinction is perceived between the supposed case and the actual one.⁷¹

Was the *Fink* case a proper occasion for the application of the principle that the courts of one nation will not sit in judgment on the acts of another? It may be suggested to the contrary that the act which is alleged to have been a tort, the writing and transmittal by Dr. Fink, the defendant, of the report concerning the plaintiff, Dr. Szalatnay-Stacho, took place on English soil. To this it may be answered that that report was written in line of duty by one Czech official to another about a third, and dealt wholly with Czech governmental business. In short, it was a matter of the internal operation of the Czech Government. By the clearest implication the invitation from the British Government to that of Czechoslovakia to set itself up and operate on British soil implied that its independence would be respected, which means that such a matter of internal governmental business should be free from British interference.⁷²

⁷¹ So distinguished an English lawyer as Sir Arnold McNair has said [*Legal Effects of War* (Cambridge, England, 1944), p. 357]: "Unless the laws of the allied country limit the validity of governmental acts to those done upon the territory of that country or a particular portion of it, it is submitted that it is immaterial in an English Court where the official act is done—be it in the home territory, or be it on British territory whereon his Majesty has consented to the establishment of the allied Government and the exercise of its governmental functions."

⁷² See also the preceding note.

It may be objected that the governmental acts whose validity was at issue in the cases previously cited were statutes, executive orders, or decrees, and that the principle of the cases does not extend to a mere report or recommendation like that of Dr. Fink. To this it may be answered that governments act only through their officers and employees; that seldom if ever is a governmental act performed except upon the report or recommendation of such persons; and that the independence of the government in question is destroyed if its officer or employee can be sued in a court of a foreign country for making his report, and must justify it to the satisfaction of a foreign judge and jury, upon peril of paying damages out of his own pocket if he fails to do so.

The fact that a British official of like rank making a report similar to that made by Dr. Fink would have had only the qualified privilege which was accorded him is beside the point. Every civilized nation with a just legal system has some method whereby nonfeasance, misfeasance, or malfeasance of governmental officers and employees may be restrained or prevented. In those countries whose law is derived from that of ancient Rome, this is done by special administrative tribunals, of which the French *Conseil d'État* is the best known. Even in the United States we have some special courts of this sort, such as the Court of Claims, the Court of Customs and Patent Appeals, and the Tax Court. But in general in England, the United States, and other countries of the common law, keeping public officers within bounds is a duty of the ordinary courts of law and equity, and a most important one. They perform this duty by the use of such writs as *mandamus*, injunction, prohibition, *quo warranto*, *certiorari*, and *habeas corpus*, directed to the officers alleged to have offended; or by suits for damages or bills in equity against them. If the defendant officer has failed to do his duty, done it wrong, or has exceeded his proper functions, he cannot in general shut off judicial inquiry by pleading that he is an officer. It is the glory of English law that no man, no matter how high his official position, is above the law. We are grateful to our English ancestors for having thus shaped the law.

But no duty is incumbent upon a court of one nation to keep an officer of another within proper bounds. As already pointed out, the judge does not know enough of the law of the country which the defendant serves to do so wisely, and to attempt the task would be an impertinence, an invasion of the dignity and independence of the foreign state. The duty rests solely upon the appropriate courts of the country which the officer serves.⁷⁸ Nor is there any importance in the circumstance, mentioned by the justices in the *Amand* case, that those courts (the Dutch courts in that case) were prevented by war from sitting. That fact did not confer any jurisdiction upon the English courts which they did not otherwise have, nor make it any more permissible for them to sit in judgment on the internal adminis-

⁷⁸ See the passage quoted from Attorney General Bradford's opinion, *ante*, p. 823.

tration of the Dutch or Czech Government. It is submitted that both the *Amand* and the *Fink* cases were proper occasions for the application of the doctrine that the courts of one nation will not sit in judgment on the acts of another; and should have been decided in favor of the respondents and defendant, respectively, on that ground.

In reading English diplomatic correspondence and judicial decisions, the writer has observed a marked reluctance, greater than that shown by citizens of most other countries in like circumstances, to admit any exception to the exclusive and universal operation of English law on English soil.⁷⁴ He attributes this to two causes. The first of these is the absence in Great Britain of a written constitution or a federal system, and the doctrine, which follows from that absence, of the omnipotence of an Act of Parliament. We in the United States have daily before our eyes the spectacle of the simultaneous and harmonious action of Federal and State law, each in its own sphere, and each with its own officers and courts. Even in the Federal or State sphere alone there are always two sorts of law, the Constitution on the higher level, and statutory law below. All this is foreign to the Englishman, who knows but one kind of law throughout England.

The other reason is the excellence of English law. English courts and English law are as fair and just as any in the world, and fairer than most. The Englishman is well aware of this fact, and therefore finds it difficult to conceive of any one having a valid objection to being subjected to English courts and English law. The combined operation of these two causes makes the idea strange and even repulsive to an Englishman that there can be any exception in England to the universal operation of English law, or that any other law can have any validity there.

There is another English case which was not cited in argument or in the

⁷⁴ The statement in the text is inapplicable to the centuries-old immunity to the local jurisdiction of a foreign sovereign and a foreign ambassador. The truth of the statement in the text, subject to the qualification just mentioned, is also shown by certain statements in the British Parliament. In the debate on the Allied Forces Act, 1940, Sir Donald Somervell, then the Attorney General of England, who as a judge later decided the *Fink* case, admitted that that Act did not concede to Allied Governments as much immunity to the local jurisdiction as they were entitled to enjoy under international law (*Hansard's Debates*, Vol. 364, No. 106, Aug. 21, 1940, col. 1405).

The truth of the statement in the text is also shown by the debate in the House of Commons on the United States of America (Visiting Forces) Act, 1942, conceding exemption from local jurisdiction to members of United States armed forces in the United Kingdom. In that debate the bill then pending was described as a "striking innovation," and as being "of a completely revolutionary character" (*Parl. Debates*, H. of C., Aug. 4, 1942, Vol. 382, pp. 902, 910), notwithstanding the fact that British forces demanded and received such immunity in France in the first World War and that the principle was supported by eminent British writers on international law and by the Judicial Committee of the British Privy Council (*Chung Chi Cheung v. The King*, [1939] A. C. 160). This matter is further discussed in the two articles in this JOURNAL by the present writer, cited in notes 8 and 10, *supra*.

judgments in the *Amand* or *Fink* cases, although, in this writer's opinion, it is the nearest of any, on the facts, to the *Fink* case. In *M. Isaacs & Sons, Ltd. v. Cook*,⁷⁵ the plaintiffs were brokers selling fruit in the fruit salesroom in the City of London, and the defendant was the High Commissioner of Australia in London. The action was one for libel in stating in a report to the Prime Minister of Australia that oranges from Victoria consigned to the above salesroom did not bring good prices, and should instead be sent to Covent Garden. The court held that the report was made by the defendant in an official capacity and was absolutely privileged. The present writer can see no logical basis for distinguishing, in respect of the privilege attaching to their official communications or their liability to suit in England on account of their official acts, between the Dutch Minister of Defense and the Czech Judge Advocate General on the one hand and the Australian High Commissioner on the other. In both the *Isaacs* and the *Fink* cases, the court failed to mention the doctrine that a court of one nation should not sit in judgment on the acts of another, and decided the issue solely on the law of libel. The *Isaacs* case shows that, as of the date of the *Fink* case, there was English precedent supporting a decision for the defendant *Fink* solely on the law of libel, without going into questions of international law.

For reasons which may be inferred from what he has said about the *Amand* and *Fink* cases, this writer thinks that the New South Wales case of *Wright v. Cantrell*⁷⁶ was wrongly decided, though his disagreement is not so much with the principles laid down by the court as with its application of those principles to the facts of the case.

In conclusion, it is submitted that, though they reached a correct result, the English courts ought not to have questioned the validity of the acts of the Dutch Government in the *Amand* case,⁷⁷ or entertained a suit against Dr. *Fink*⁷⁸ on account of his official acts. This writer also concludes that, consistently with the principles laid down in *Wright v. Cantrell*,⁷⁹ that case might and ought to have been decided otherwise.

The foregoing discussion shows, both on logical grounds and on authority, that an officer or employee of an exiled government, or of any government, performing official duties on the soil of another country with its consent, should not be liable to suit in the courts of the latter country on account of the performance of official acts. To state the principle in another form, the courts of one country ought not to sit in judgment on the acts of the government of another country within the latter's jurisdiction, even though those acts be performed, with the consent of the country of the forum, on its soil.

⁷⁵[1925] 2 K. B. 391.

⁷⁶44 State Reports N. S. W. 45; 61 Weekly Notes N. S. W. 38.

⁷⁷[1941] 2 K. B. 239; [1942] 1 K. B. 445.

⁷⁸[1947] K. B. 1.

⁷⁹44 State Reports N. S. W. 45; 61 Weekly Notes N. S. W. 38.

THE MILITARY COMMISSION

By A. WIGFALL GREEN *

The spotlight which has played on the international military trials at Nuremberg and elsewhere has left in relative darkness and obscurity the trials by the military commission of the American fighting and occupation forces.

The military commission might have been used to try the major war criminals, and, had it been used, the trials of such criminals might have been more expeditious and conducted more in accord with established military and legal procedure. As the major war criminals had, however, offended against the laws of all civilized nations the United States acted with wisdom in reaching agreement on August 8, 1945, with the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Union of Soviet Socialist Republics upon a common method of prosecuting and punishing the major war criminals of the European Axis. Although the Charter of the International Military Tribunal gives to this tribunal jurisdiction over crimes against peace, war crimes, and crimes against humanity, Article 4 of the agreement itself grants authority to each signatory to return "war criminals to the countries where they committed their crimes," and Article 6 recognizes in each signatory the right to try war criminals in "any national or occupation court established or to be established in any allied territory or in Germany for the trial of war criminals."¹ This international agreement, by implication, reaffirms the right of the United States to try war criminals by military commission. No attempt is made here to determine whether the United States should have tried war criminals by military commission. This paper merely endeavors to trace the history and the legal authority of the military commission, an arm of the military forces which has proved invaluable in dispensing justice during combat and occupation.

1. *Origin and History*

During the early history of military law the term "military commission" was unknown. In 1776 Captain Nathan Hale was charged with spying and was tried by a military court; in 1780 Major André was tried

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¹ *Nazi Conspiracy and Aggression* (Washington, 1946), Vol. I, p. 2.

on a similar charge by a military court of inquiry, then called a "board of officers"; and in the same year, by Congressional resolution, Joshua Hett Smith was tried by a special court martial for complicity with General Arnold in treasonable action.

During the Mexican War a military commission, so called, was appointed by General Scott by G. O. 20 of February 19, 1847, for the trial of murder, robbery, and other criminal offenses usually tried in civil courts. General Scott, however, appointed separate tribunals, called councils of war, for the trial of violations of the laws of war; thus the council of war performed the functions of the modern military commission.²

In 1861, during the Civil War, the functions of the commission and the council initiated by General Scott were united, and in 1863 the term "military commission" received statutory recognition. In the following year a Bureau of Military Justice was established to revise and record the proceedings of military commissions.

The name "military commission" was continued through World War I.

On the day after the attack on Pearl Harbor G. O. No. 4, of December 8, 1941, was issued establishing the jurisdiction of the military commission under martial law in Hawaii; and on July 2, 1942, the President appointed³ a military commission to try eight saboteurs.⁴ Under Article II of Proclamation No. 4 of *Allied Military Government of Occupied Territory Plan, Proclamations, and Instructions*, inaugurated for the military government of Sicily, three types of military court were established, as follows: the general military court, similar to the military commission; the superior military court, similar to the superior provost court; and the summary military court, similar to the inferior provost court. The *United States Army and Navy Manual of Military Government and Civil Affairs*,⁵ containing the "principles and basic policies" which "should be followed in their broad lines unless special circumstances dictate otherwise," provides for the establishment of both military commissions and provost courts. The *United States Navy Civil Affairs Manual, Procedure for Military Government Courts*,⁶ which was not formally adopted by the United States Army, makes provision for the establishment of the military commission and the superior and summary provost court.

During the past seven years, the military commission has operated with quiet efficiency in the United States, France, Germany, Austria, Italy, Japan, and Korea in bringing to trial individuals and organizations engaging in terrorism, subversive activity, and violation of the laws of war.

² William Winthrop, *Military Law and Precedents* (Washington, 1920), pp. 832-833.

³ 7 *Fed. Reg.* 5103.

⁴ *Ex parte Quirin*, 317 U. S. 1.

⁵ FM 27-5, OPNAV 50E-3.

⁶ OPNAV 13-23.

2. *Authority for the Military Commission*

The military commission, like the civil law court, exists by common law and statutory authority. Common law authority for the military commission is derived from the law of war. The military commission exercising jurisdiction under common law authority is usually appointed by a superior military commander and is limited in its procedure only by the will of that commander. Like any other common law court, in the absence of directive of superior authority to the contrary, the military commission is free to formulate its own rules of procedure. Statutory authority is usually derived from special legislation conferring specific powers upon the military commission. Of this legislation the most important statutes are the Articles of War. But the military commission must observe the procedure set forth in the Articles of War and in *A Manual for Courts-Martial 1928* (now in the process of revision) only when it is appointed under the authority of the Articles of War.

The military commission appointed by the President on July 2, 1942, in *Ex parte Quirin* combined both common law authority (the law of war) and statutory authority (the Articles of War). The eight saboteurs were tried not only on Charge I, "Violation of the Law of War," but also on Charges II and III, violation of Articles of War 81 and 82, and on Charge IV, "Conspiracy to Commit All of the Above Acts." The order appointing the commission reads, in part, "The Commission shall have power to and shall, as occasion requires, make such rules for the conduct of the proceeding, consistent with the powers of military commissions under the Articles of War, as it shall deem necessary for a full and fair trial of the matters before it." The appointing order provides that "Such evidence shall be admitted as would, in the opinion of the President of the Commission, have probative value to a reasonable man."

a. The Constitution of the United States:

Even before the ratification of the Constitution of the United States the equivalent of the military commission was appointed to try Joshua Hett Smith and others. The Constitution itself provides abundant authority for the appointment of the military commission, as follows:

(1) Article I, Section 8: Powers of Congress:

- To . . . provide for the common Defense and general Welfare
- To constitute Tribunals inferior to the supreme Court
- To define and punish . . . Offenses against the Law of Nations
- To declare War . . . and make Rules concerning Captures on Land . . .
- To raise and support Armies . . .
- To make Rules for the Government and Regulation of the land and naval Forces
- To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States . . .

To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers . . .

This power of Congress is stated thus in *Military Commissions, 1865*: "A military tribunal exists under and according to the Constitution in time of war. Congress may prescribe how all such tribunals are to be constituted, what shall be their jurisdiction, and mode of procedure."⁷ Birkhimer says of this power: "Another power given Congress is to define and punish offenses against the law of nations, thus giving that law express constitutional recognition. . . . When war breaks out, the rights, duties, and obligations of parties belligerent spring from and are measured by the laws of war, a branch of the law of nations. When war exists, whatever is done in accordance with the laws of war is not regarded as arbitrary, but lawful, justifiable, and indispensable to public safety."⁸

(2) Powers of the President:

Article II, Section 1: The President is vested with the 'executive power' and takes an oath faithfully to 'execute the Office of President' and to 'preserve, protect, and defend the Constitution . . .'

Article II, Section 2: 'The President shall be Commander in Chief of the Army and Navy of the United States . . .'

Article II, Section 3: The President 'shall take Care that the Laws be faithfully executed . . .'

The minority opinion in *Ex parte Milligan* (4 Wall. 139), expressed through Chief Justice Chase, provides: "Congress has, therefore, the power to provide by law for carrying on the war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and the conduct of campaigns. That power and duty belong to the President as commander-in-chief." In *Ex parte Quirin*, the power of the President is stated as follows: "The Constitution thus invests the President . . . with the power to carry into effect . . . all laws defining and punishing offenses against the law of nations. . . ." In *U. S. v. Eliason* (16 Pet. 302, quoted in Note 2 on Art. 2, Sec. 2, Cl. 1, USCA, Pt. 2, 232), it is stated: "The power of the executive to establish rules and regulations for the government of the army is undoubted." And in *Nordmann v. Woodring* (28 F. Supp. 573, quoted in Note 2 on Art. 2, Sec. 2, Cl. 1, USCA, Supp. to Pt. 2, 72), it is stated: "Under this clause the President has the power to employ the army and the navy in a manner which he may deem most effectual, including the power to establish rules and regulations for the

⁷ 11 Op. Atty. Gen. 298.

⁸ William E. Birkhimer, *Military Government and Martial Law* (3rd ed., Kansas City, 1914), p. 51.

government of the army and navy." In *Griffin v. Wilcox* (21 Ind. 382, quoted in Note 5 on Art. 2, Sec. 2, Cl. 1, USCA, Pt. 2) the power of the President is summarized as follows: "The right of the President temporarily to govern localities through his military officers he derives solely from the fact that he is the commander-in-chief of the army, and is to see that the laws are executed. . . . Birkhimer, at page 55 of the work cited, notes that the President "may invade the hostile country and subject it to the sovereignty and authority of the United States. When Tampico, Mexico, had been captured and the State of Tamaulipas subjugated, other nations were bound to regard the country, while our possession continued, as the territory of the United States and respect it as such. . . . The power of the President, under which this conquest was made, was that of a military commander prosecuting a war waged against a public enemy by the authority of his government." Furthermore, at page 153, he says: "Thus it has been solemnly determined that the authority of the President, and of commanders under him, for the establishment of courts in conquered territory is complete, limited only by the exigencies of service and the laws of war; that such courts, if given jurisdiction by the power bringing them into existence, properly may take cognizance of questions, military, criminal, and civil; and that there is no distinction in this regard between the cases of territory conquered from a foreign enemy or rescued from rebels treated as belligerents."

b. The Articles of War:

The following Articles of War mention the "military commission" in so many words: Arts. 15, 23, 24, 25, 26, 27, 32 ("military tribunal"), 38, 46, 80, 81, 82, and 115. Of these, however, only the following are important as guides:

Article 15 provides that jurisdiction of courts martial shall not deprive military commissions of concurrent jurisdiction (AW 80, 81, and 82).

Article 38 provides that the President may prescribe "the procedure, including modes of proof, in cases before . . . military commissions . . ." and that the President shall, "in so far as he shall deem practicable, apply the rules of evidence generally recognized in the trials of criminal cases in the district courts of the United States. . . ."

Article 80 provides for trial by military commission or other military tribunal of any person subject to military law who deals in captured or abandoned property whereby he receives or expects benefit to himself or any one connected with him, or who fails to give notice of possession of such property and to turn it over to the proper authority when it comes into his possession or custody.

Article 81 provides for trial by military commission of those "relieving, corresponding with, or aiding the enemy." Violation of this article was charged in *Ex parte Quirin*.

Article 82 provides for trial by military commission of any person "found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere." Violation of this article was charged in *Ex parte Quirin*.

The authority of the military commission transcends the authority contained in the Articles of War, which were enacted for trial of personnel of the Army and followers thereof. Only the articles which mention military commissions apply to trial by military commission for violation of the Articles of War. If, as is usually the case, the military commission is not appointed under authority of the Articles of War or is not trying for violation of the Articles of War, the Articles of War (even those which specifically mention the military commission) are not applicable, except as a guide. The President, although invoking the power granted by Article of War 38 in his appointment of a military commission on July 2, 1942, was not confined to the provisions of *A Manual for Courts-Martial U. S. Army 1928*. The Supreme Court said in *Ex parte Quirin*, at page 23, "Some members of the Court are of the opinion that Congress did not intend the Articles of War to govern a Presidential military commission . . . and that the context of the Articles makes clear that they should not be construed to apply in that class of cases"; and, at page 9, "Congress, in addition to making rules for the government of our Armed Forces, has thus exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commissions to try persons and offenses which, according to the rules and precepts of the law of nations, and more particularly the law of war, are cognizable by such tribunals." This doctrine was recognized during the Civil War: Francis Lieber states in Section 13 of his *Instructions*, issued in 1863 for the armies in the field, ". . . cases which do not come within the 'Rules and Articles of War' or the jurisdiction conferred by statute on courts-martial are tried by military commissions."

c. Statutes other than the Articles of War:

Many statutes apply directly or indirectly to offenses normally tried by the military commission. The most significant of the more recent statutes may be found in the supplement to Volume 50 of the U. S. Code Annotated.

d. Legal Precedent: Decisions of the Supreme Court and Opinions of the Attorney General of the United States:

The number of precedents is too great to enumerate even those of major importance. The following are representative only:

Ex parte Milligan, 4 Wall. 2

Mechanics and Traders' Bank v. Union Bank, 22 Wall. 276

U. S. ex rel. Wessels v. McDonald, 256 Fed. 754; 256 U. S. 705

U. S. v. Diekelman, 92 U. S. 520
Ex parte Quirin, 317 U. S. 1
Military Commissions, 11 Op. Atty. Gen. 297
The Modoc Indian Prisoners, 14 Op. Atty. Gen. 249

e. Treaties:

The military commission, of course, is governed by the terms of any treaty between the United States and the territory in which that commission has jurisdiction, and by the terms of any armistice, conditional surrender, capitulation or pact entered into by the United States. Among the treaties of a general nature are the following:

Geneva Convention July 27, 1929—prisoners of war
 Geneva (Red Cross) Convention July 27, 1929—wounded and sick
 Hague Convention No. II October 18, 1907—opening of hostilities
 Hague Convention No. IV and Annex thereto, October 18, 1907—laws and customs of war on land
 Hague Convention No. 5 October 18, 1907—neutral powers
 Hague Convention No. VIII October 18, 1907—submarine contact mines
 Hague Convention No. IX October 18, 1907—bombardment by naval forces
 Hague Declaration No. XIV October 18, 1907—discharge of explosives from balloons
 Pact of Paris (Briand-Kellogg Pact) August 27, 1928—renunciation of war

f. War and Navy Department and Other Publications:

War Department *Basic Field Manual 27-10*, Rules of Land Warfare, October 1, 1940
 United States Army and Navy *Manual of Military Government and Civil Affairs*, FM 27-5, OPNAV 50E-3, December 22, 1943
 War Department *Technical Manual 27-240*, Cases on Military Government, May 20, 1943
 Navy Department *Civil Affairs Manual, Procedure for Military Government Courts*, OPNAV 13-23, November 15, 1944
American Military Government of Occupied Germany (World War I), Colonel I. L. Hunt, U. S. Army, et al., mimeographed 1942
Allied Military Government of Occupied Territory Plan, Proclamations, and Instruction for Military Government of Sicily, 2d ed., September 1943
Consolidated Instructions for Allied Military Courts with Specimen Forms and Rules of Procedure, Allied Control Commission, Italy
 Supreme Headquarters, Allied Expeditionary Force *Field Handbook for Civil Affairs, France*
 Supreme Headquarters, Allied Expeditionary Force *Handbook for Military Government in Germany prior to Defeat or Surrender*, December, 1944
Reports on Military Government Activities in the Marianas and Other Islands, War Department, 1945

.g. Laws of War; Law of Nations:

The military commission has great authority under the laws of war. Francis Lieber, in Section 13 of his *Instructions*, recognizes military jurisdiction "derived from the common law of war." Such jurisdiction is also recognized in *Field Manual 27-10*. Attorney General Randolph stated in *Military Commissions* (11 Op. Atty. Gen. 299) that the law of nations is "essentially a part of the law of the land." It is, moreover, stated in *Ex parte Vallandigham* (1 Wall. 249), "... military offenses which do not come within the statute must be tried and punished under the common law of war. Cases which do not come within the 'rules and regulations of war,' or the jurisdiction conferred by statute or court martial, are tried by military commissions." War crimes in international law are enumerated in chapters 6 and 11 of War Department *Field Manual 27-10, Rules of Land Warfare*, and in paragraphs 441-451 of chapter 14 of the *British Manual of Military Law 1929*.

Article I, Section 8, Clause 1 of the Constitution empowers Congress "to define and punish . . . Offenses against the Law of Nations." Yet, as is stated in *Military Commissions* (11 Op. Atty. Gen. 313), "Congress has not undertaken to define the code of war nor to punish offenses against it." "Congress had," it is said in *Ex parte Quirin*, "the choice of crystalizing in permanent form and minute detail every offense against the law of war, or of adopting the system of common law applied by military tribunals so far as it should be recognized and deemed applicable by the courts. It chose the latter course."

In addition to the power of Congress, the President of the United States, or the Secretary of National Defense or the Secretary of the Army acting on behalf of the President, may appoint and direct the procedure of the military commission. Yet, in the absence of direction from any of these, the commander in the field has absolute power over the military commission. This doctrine is accepted in *Military Commissions* (11 Op. Atty. Gen. 305, 298, and 300): "The commander of an army in time of war has the same power to organize military tribunals . . . that he has to . . . fight battles. His authority in each case is from the law and usage of war"; and, "Should Congress fail to create such tribunals, then, under the Constitution, they must be constituted according to the laws and usages of civilized warfare"; and, "The law of war . . . declares what shall not be done. . . . The legitimate use of the great power of war, or rather the prohibitions upon the use of that power, increase or diminish as the necessity of the case demands." It is further stated in *Mechanics and Traders' Bank v. Union Bank* (22 Wall. 276), "A court established by . . . the commanding general . . . will . . . be presumed to have been authorized by the President." Birkhimer says at page 318: "Every nation determines for itself how it will regard the acts of its military officers. Unquestionably the general rule is to sustain them. In no other way can

they be brought to act boldly for the State. . . . The soldier who is to strike effectively against his country's foes must not dread an enemy at the rear more dangerous to his fame and success than the braver one in front. Governments appreciate this fact, and therefore generally sustain the commanders of their forces in all their belligerent measures."

h. Law of Place in Which Offense Was Committed and in Which It Is Tried:

The law of the place in which an offense was committed and the law of the place in which the offense is tried, if the places are not the same, are important as guides for the military commission, but such law in no sense governs the military commission. It need not be recognized, or it may be altered, by the military commander. The freedom of the commander is today nearly as absolute as it was when Francis Lieber prepared Section 41 of his *Instructions* for armies of the United States in the field. The power of military law was described by the Duke of Wellington in the House of Lords as being "neither more nor less than the will of the general who commands the army" (quoted in *U. S. v. Diekelman*, 92 U. S. 520). These opinions are substantially corroborated by Oppenheim (II *International Law*, 6th ed., 342): "In carrying it (military administration) out the occupant is totally independent of the constitution and the laws of the territory." General Order No. 4 of December 8, 1941, announcing the policy for military commissions in Hawaii, establishes sound criteria in providing that "military commissions will be guided by, but not limited to, the penalties authorized by the courts-martial manual, the laws of the United States, the Territory of Hawaii, the District of Columbia, and the customs of war in like cases." During military occupation, the occupying forces are, of course, not subject to the law of the conquered territory.

i. General Orders, Ordinances, etc., of Commanding General:

Unless the military commission has contrary instructions from higher authority, it is governed by any regulations issued by the commanding general of the area in which it operates.

3. Appointment of Military Commission

The following have the power to appoint military commissions:

- Congress, under the powers noted in 2a(1) above
- The President, under the powers noted in 2a(2) above
- The Secretary of National Defense when empowered by or acting on behalf of Congress or the President
- The Secretary of the Army when empowered by or acting on behalf of Congress, the President, or the Secretary of National Defense
- The commanding general of a theater of operations, or a person to whom he has delegated such authority, including a military governor
- A commanding officer exercising general court-martial jurisdiction

Paragraph 1a of FM 27-5, OPNAV 50E-3, says, "The theater commander bears full responsibility for military government. He is, therefore, usually designated as military governor, but may delegate both his authority and title to a subordinate commander." Paragraph 8 of the same Manual says, "In occupied territory the commander, by virtue of his position, has supreme legislative, executive, and judicial authority, limited only by the laws and customs of war and by directives from higher authority," and paragraph 9b thereof provides that "the theater commander must always have full responsibility for military government." No specific authority by the President or the Secretary of National Defense or the Secretary of the Army is a prerequisite to the appointment of such commission, although, as a matter of policy, it is desirable for such commander to obtain specific authority. Paragraph 41 of FM 27-5, OPNAV 50E-3, says that it is advisable to delegate authority to appoint military commissions to "division, force or other unit commanders in forward areas and to civil affairs officers in both forward and rear areas."

4. *Jurisdiction of Military Commissions*

a. Concurrent and Exclusive:

(1) Courts Martial and Military Commissions:

Article of War 15 provides as follows: "The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions . . . of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war be triable by such military commissions. . . ."

Article of War 80 provides that a court martial or a military commission may try any "person subject to military law" who deals in captured or abandoned property.

Article of War 81 provides that a court martial or a military commission may try any person who relieves or attempts to relieve the enemy or who harbors or holds correspondence with the enemy or gives intelligence to him.

Article of War 82 provides that a court martial or a military commission may try any person who in time of war is accused of being a spy.

Violations of Articles of War 80, 81, and 82 by military personnel and camp followers have been tried by military commission,⁹ and there may be good reason at times for trying such persons by military commission for offenses not included in these three articles or not efficiently justiciable under the other Articles of War (like Article of War 96) if such offense is violative of the laws of war and not strictly of a military nature, or if, indeed, officers of high rank have offended against the law of nations. It is the general rule, however, that the following will not be tried by military commission:

⁹ Winthrop, *op. cit.*, p. 838; Birkhimer, *op. cit.*, p. 153.

- (a) Persons subject to military or naval law of the United States or its allies
- (b) Persons entitled to the privileges of prisoners of war
- (c) Persons having diplomatic immunity

Paragraph 7c of FM 27-10 provides: ". . . it has generally been held that military commissions have no jurisdiction of such purely military offenses specified in the Articles of War as those articles expressly make punishable by sentence of court martial (except where the military commission is also given express statutory jurisdiction over the offense (A. W. 80, 81, 82))." General Order No. 4 of December 8, 1941, announcing the policy to be followed by military commissions under martial law in Hawaii, provides, "The jurisdiction thus given does not include the right to try commissioned and enlisted personnel of the United States Army and Navy. Such persons shall be turned over to their respective services for disposition."

(2) Local Criminal and Civil Courts and Military Commissions in Occupied Territory:

Military government courts, including military commissions, legally may assume jurisdiction over all criminal offenses committed in occupied territory and over civil cases affecting the military government. The *Handbook for Military Government in Germany prior to Defeat or Surrender*, 1944, provides, in paragraphs 543 and 545, for supervision and review of trials by local courts, and, in paragraph 87, especially for review of sentences by German courts involving the death penalty or corporal punishment, and, in paragraphs 546 and 569, for transfer of cases to military government courts, particularly those in which the interests of the military government are affected.

Normally, however, if the criminal and civil courts are open and are functioning properly and if the offense does not affect the interests of the United States or its allies or persons subject to the military or naval law thereof, military commissions do not ordinarily exercise jurisdiction. But if an offense has been committed against the laws of war by one not in the military service, such offense may be tried by a military commission even though the local criminal courts are open and functioning, and even though the offense is cognizable by such local criminal courts. The doctrine is properly stated by Captain Stephen Vincent Benet at page 16 in the third edition of *A Treatise on Military Law and the Practice of Courts-Martial*: "many offenses which in time of peace are civil offenses, become in time of war military offenses, and are to be tried by a military tribunal even in places where civil tribunals exist." In *Ex parte Milligan* (4 Wall. 2) the Supreme Court granted a writ of habeas corpus and discharged Milligan, a civilian, largely on the ground that the civil courts were open and functioning and that Milligan, a citizen of a state which had not

seceded from the Union, might not be tried by a military commission. The Federal Court for the Southern District of New York in 1920, however, in *U. S. ex rel. Wessels v. McDonald* (265 Fed. 754), declined to follow the Milligan case. And in *Ex parte Quirin*, the Supreme Court held that although the civil courts were open, a military commission had jurisdiction to try saboteurs. In *Military Commissions* (11 Op. Atty. Gen. 312) it is stated: "As has been shown, when war comes, the laws of war come with it. Infractions of the laws of nations are not denominated *crimes*, but *offenses*. Hence, the expression in the Constitution that 'Congress shall have power to define and punish . . . offenses against the law of nations.' Many of the *offenses* against the law of nations for which a man may, by the laws of war, lose his life, his liberty, or his property, are not *crimes*"; and (*ibid.*, p. 298) the conspirators who effected the assassination of President Lincoln "not only can but ought to be tried before a military tribunal"; and (*ibid.*, pp. 314-315), "The judge of a civil court is not more strongly bound under the Constitution and the law to try a criminal than is the military to try an offender against the laws of war"; and (*ibid.*, p. 317), "If the persons charged have offended against the laws of war," it would be "palpably wrong for the military to hand them over to the civil courts. . . ." The Espionage Act of 1917 (40 Stat. 219; 50 USCA 38) provides, "Nothing contained in this chapter or chapter 12 of this title (Vessels in Territorial Waters of United States) shall be deemed to limit the jurisdiction of . . . military commissions." Moreover, Proclamation No. 2561 of July 2, 1942 (7 Fed. Reg., No. 132, page 5101), provides that any person acting under the direction of an enemy nation and committing, or attempting to commit, sabotage, espionage, or warlike acts or violations of the laws of war shall be subject to the laws of war and to the jurisdiction of military tribunals and shall not be entitled to remedy in the courts of the United States or its states except under regulations of the Attorney General approved by the Secretary of War. It is not necessary, however, that all offenses against the laws of war be tried by military commission. The nature and the degree of the offense, as well as judicial comity and common sense, will determine which tribunal should have jurisdiction.

b. Over Persons:

(1) Persons Subject to Military and Naval Law of the United States:

As stated in paragraph 4a(1) above, for violation of Articles of War 80, 81, and 82, persons subject to the military or naval law of the United States may be tried by either court martial (by general court martial only for violation of Article of War 82) or military commission, although for violation of all the Articles of War it has been the practice for courts martial to exercise exclusive jurisdiction. In this connection, it is interesting

to note that chapter 31 of the United States of America (Visiting Forces) Act, 1942 (5 and 6 Geo. 6), recognizes the doctrine of international law that the military forces of one country who are visiting in another country are subject to their own military law, and renders exclusive such jurisdiction of the United States over its forces in the United Kingdom. On page 34 of Part II of British *Notes on the Military Government of Occupied Enemy Territory* it is said that "a civilian employee may be tried by court martial" and also by "military court if the Military Administrator so proclaims."

(2) Civilians of the United States Not in the Armed Forces but Following Such Forces:

Such civilians are subject to the jurisdiction of the military commission under the same conditions as members of the armed forces.

(3) Civilians of the United States Not in the Armed Forces or Not Following Such Forces:

Such civilians are subject to the jurisdiction of the military commission for offenses against the law of war. The conspirators against the life of President Lincoln were tried by military commission, as set forth in *Military Commissions* (11 Op. Atty. Gen. 297). Under martial law in Hawaii civilian citizens became subject to trial by military commission for major offenses—not necessarily violations of the laws of war—under the provisions of General Order No. 4, December 8, 1941. Proclamation No. 2561 of July 2, 1942, declares that any persons who "act under the direction" of any nation at war with the United States shall be "subject to the law of war and to the jurisdiction of military tribunals"; this would appear to include not only aliens but also citizens of the United States. In *Ex parte Quirin* it was argued that two of the petitioners for a writ of habeas corpus, one of whom had been actually naturalized and the other impliedly naturalized, repudiated their American citizenship under the Nationality Act of 1940 (54 Stat. 1168; 8 USCA 801).

(4) Merchant Seamen:

Ordinarily, merchant seamen who commit offenses aboard ship are under the jurisdiction of the nation whose flag the ship flies. In general, American merchant seamen serving with the Army or the Navy are subject to the jurisdiction of the armed force with which they are serving. During World War II, arrangements sometimes were made between the Army, the Navy, the War Shipping Administration, and Department of State representatives to govern jurisdiction over merchant seamen who had committed offenses ashore on foreign territory. Although there is no legal objection to the trial by a military occupant of a merchant seamen under the jurisdiction of a friendly foreign nation for an offense committed within

the territory of the occupant, it is better practice to surrender the merchant seaman to such foreign nation for trial.

(5) Friendly Aliens:

In general, friendly aliens when not subject to military jurisdiction have the status of civilian citizens not in the armed forces or not following such forces, and are amenable to trial by military commission. If, however, they are not resident, or have committed no offense, in the United States or in an area occupied by the United States, and if their violation of the law of war does not affect the safety of our troops or does not interfere with our military mission, they should not be subjected to trial by United States military commission.

If, however, such friendly aliens are in the Army of the United States or are following or accompanying it, their status is that of citizens of the United States. The doctrine is correctly stated at page 207 of Volume II of the sixth edition of Oppenheim's *International Law* that subjects of an allied nation who enter the armed forces of a belligerent "are in no better and no worse position, as regards the enemy, than the subjects of the States whose forces they have joined." Nor are they in better or worse position than the natives of the armed forces whom they have joined.

Persons subject to the military or naval law of an allied nation, although legally subject to trial by military commission of the occupant whose laws they have offended against, should, in general, be delivered to the forces of that nation for trial. This is particularly true in the case of joint occupation by two nations.

(6) Displaced Persons:

Displaced persons may be tried by military commissions, or other military courts, of the military power exercising control over the area in which they are held; or, with the consent of such military power, by the native courts. Paragraph 88 of the *Handbook for Military Government in Germany*, 1944, provides for the trial of displaced persons who are nationals of any of the United Nations by either military government courts, or, with the approval of military government officers, by German courts.

(7) Neutrals:

In general, subjects of neutral states do not bear enemy character. According to American practice, however, they may assume enemy character by continuing to be domiciled in enemy territory after the outbreak of hostilities. Conversely, enemies who are domiciled in a neutral country after the outbreak of hostilities lose their enemy character. Either is subject to trial by military commission for violation of the laws of war.¹⁰

¹⁰ Chapter 2, Title 18, USCA, 21-39, defines offenses against neutrality. See also Article 17, Hague Convention No. IV (paragraph 400, FM 27-10); paragraph 108, *Handbook for Military Government in Germany*; and Oppenheim, *op. cit.*, pp. 218-219.

(8) Enemy Aliens:

As early as the beginning of the eighteenth century, it was established in *Sylvester's Case* (7 Mod. 150), "If an alien enemy come into England without the queen's protection, he shall be seized and imprisoned by the law of England, and he shall have no advantage of the law of England." Presidential Proclamation No. 2561 of July 2, 1942, provides that enemy aliens who enter or attempt to enter the United States in time of war and are charged with committing or attempting to commit sabotage, espionage, or hostile or warlike acts are subject to the jurisdiction of military tribunals and are denied access to tribunals of the United States and the States thereof except under regulations of the Attorney General approved by the Secretary of War. Because of this proclamation, it was decided in *Bernheimer v. Vurpillot* (D. C. Pa. 1942, 42 F. Supp. 830) that citizens of the Reich should be denied access to United States courts, although the actionable events occurred before the declaration of war. It was properly stated in this case, "Generally, in time of war no nation will permit a citizen of an enemy country to use its courts in any way which might be hurtful to it, or helpful to the enemy, in prosecution of the war."

United States military tribunals may also try alien enemies in territory under American martial law.

(9) Prisoners of War:

Article 63 of the Geneva Convention of July 27, 1929, relative to the Treatment of Prisoners of War (paragraph 136, FM 27-10) provides that prisoners of war must be tried "by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power."

(10) Diplomats:

Except when directed by Congress, the President, the Secretary of National Defense, or the Secretary of the Army, persons entitled to diplomatic immunity should not be tried by military commission.

c. Offenses:

The military commission in general has jurisdiction over offenses:

- (1) Against the law of nations and the law of war
- (2) Affecting adversely the security of the military forces
- (3) Hindering the purposes of the military mission or of the military government
- (4) Violative of military orders or regulations
- (5) Of a civil nature in occupied territory, particularly when such offenses or actions affect the military
- (6) Of a criminal nature in occupied territory. Jurisdiction is ordinarily not assumed, however, unless the criminal and civil courts are not functioning, or, if functioning, are believed to be inefficient in the dispensation of justice

- (7) Committed outside the occupied territory provided the offenders are within the occupied territory. However, Hitler and other major war criminals are to be indicted and tried by international military tribunals although they are believed not to be within the occupied area of Germany

Civil claims against occupying Powers should be adjudicated by the occupants. During World War II, United States claims commissions and agencies were established to settle such claims.

Paragraph 42c of Field Manual 27-5, OPNAV 50E-3, provides that a military commission may exercise jurisdiction over offenses "against the laws and usages of war" and violations of the "proclamations, ordinances, regulations or orders promulgated by the theater commander or by his authorized subordinates." Section 3 of Article II of Proclamation No. 4 of the AMGOT plan gives allied military courts jurisdiction over offenses against the laws and usages of war; offenses under proclamations, orders, and regulations of the allied military government; and offenses against Italian law, provided that "the military governor or an officer acting under his authority shall have ordered the trial of the case or class of cases by a military court." Article II of Ordinance No. 2 of *Handbook for Military Government in Germany* gives military government courts jurisdiction over offenses against the laws and usages of war, offenses under any proclamation, law, ordinance, notice, or order issued under the authority of the military government or the allied forces, and offenses under the laws of the occupied territory. Section 3, Article II, of Proclamation No. 3, issued in the Marianas, gives exceptional military courts practically identical jurisdiction. Birkhimer, at pages 359 and 360, states the principle succinctly: "... the conqueror . . . has full authority to have all cases, civil or criminal, affecting all persons, arising in the conquered district, determined before tribunals convened by his authority."

d. Place:

The military commission ordinarily exercises jurisdiction only in the area actually under military control or occupation. The authoritative definition of occupied territory is contained in paragraph 271, Field Manual 27-10, which quotes Article 42, H. R.: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." Paragraph 1a, Field Manual 27-5, OPNAV 50E-3, provides that military government (which always has authority to appoint military commissions) is exercised over "enemy territory, or allied or domestic territory recovered from enemy occupation, or from rebels treated as belligerents" when the occupying force "has substituted its authority for that of the sovereign or a previous government."

The military commission may function also within the United States,

or within its territories, as in Hawaii, in which the inhabitants are not treated as belligerents. The place of trial need not be that in which the offense was committed. In *Ex parte Quirin*, a commission was appointed to try in Washington, D. C., offenses committed in New York and in Florida. Germans who, during World War I, seized French private property and transported it to Germany in contravention of Article 46 of the Annex to Hague Convention No. IV of October 18, 1907 (paragraphs 323-326, FM 27-10), were held to be punishable by French criminal courts.¹¹

e. Time:

Offenses committed before a formal declaration of war or before the declaration of martial law may be tried by military commission.¹² Bernard Julius Otto Kuehn was tried on February 21, 1942, by a military commission in Honolulu for conspiring with Japanese officials to betray the United States fleet to the Imperial Japanese Government four days before the attack on December 7, 1941. Many persons have been tried at Nuremberg by international military tribunals for offenses committed before a formal declaration of war. The military commission has jurisdiction over offenses committed during an armistice. Offenses committed after the ratification of a treaty of peace by the hostile parties or after declaration by competent authority of the termination of the war, however, are not cognizable by military commissions.¹³ Needless to say, a treaty of peace may make such arrangements for the trial of offenses committed after the conclusion of peace as the parties to the treaty may agree upon.

¹¹ James W. Garner, *International Law and the World War*, Vol. II, pp. 478-480.

¹² *Digest of Opinions of The Judge Advocate General*, 1912, p. 1067.

¹³ *Ibid.*, p. 1068.

RECENT DEVELOPMENTS WITH RESPECT TO THE CONTINENTAL SHELF

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The proclamation of the President of the United States on September 28, 1945,¹ declaring as a matter of policy that the natural resources of the subsoil and sea bed of the continental shelf appertain to the United States, proves to have offered a marketable concept in the marts of international law. Six States have followed the example in the last three years, with certain notable modifications of their own, and it appears not improbable that the principle thus put forward may gain increasing acceptance in international practice. It seems appropriate therefore briefly to review various developments with respect to jurisdiction over the continental shelf, the epicontinental sea, and their resources.

The United States proclamation has already been the subject of comment in this JOURNAL, where its significance as a new departure has been remarked upon.² While it undoubtedly turned fresh ground in undertaking by such means to extend national jurisdiction over submarine areas outside of territorial waters, its approach was not without harbingers, both in the writings of publicists and in the practice of states. As early as 1916 a Spanish expert, concerned over the depletion of fisheries, urged that territorial waters be extended to include the whole continental shelf, where the important food species chiefly flourished.³ Similar recognition of the importance of the shelf with respect to fisheries was being voiced simultaneously by Argentine writers⁴ who emphasized the need for adequate controls, and this concern was reiterated some years later in the League of Nations Committee of Experts for the Progressive Codification of International Law.⁵ In quite another connection, the year 1916 also saw the assertion by the Russian Imperial Government of a claim to certain uninhabited islands north of Siberia on the ground that they formed "the

¹ Proclamation No. 2667, 10 *Federal Register* 12303.

² Edwin Borchard, "Resources of the Continental Shelf," this JOURNAL, Vol. 40 (1946), p. 53; J. W. Bingham, "The Continental Shelf and the Marginal Belt," *ibid.*, p. 173.

³ DeBuren, later Spanish Director-General of Fisheries, cited in League of Nations Document C.196.M.70.1927.V. (1927), p. 63.

⁴ S. E. Storni, *Intereses Argentinos en el Mar* (1916), p. 38 ff.; J. L. Suarez, *Diplomacia Universitaria Americana* (1918), pp. 174, 180 ff.

⁵ Committee Report, League of Nations Document C.196.M.70.1927.V. (1927), pp. 63-65.

northern continuation of the Siberian continental shelf"—an assertion repeated by the Soviet Government in 1924.⁶

Also of significance as a precedent, although it did not refer in terms to the continental shelf, was the treaty of February 26, 1942, between Venezuela and the United Kingdom, undertaking to dispose of the submarine areas of the Gulf of Paria.⁷ The Gulf, which separates Venezuela from Trinidad, is about 70 miles long by 35 miles wide, with openings at each end of some six and ten miles respectively; it is very shallow, and petroleum deposits are reported to lie beneath its waters. By the agreement, each state undertook to recognize "any rights of sovereignty or control which have been or may hereafter be lawfully acquired" by the other over submarine areas on their respective sides of an arbitrary boundary line. "Submarine areas" were defined as "the sea bed and sub-soil outside of the territorial waters of the High Contracting Parties." It was expressly provided that nothing in the treaty should affect in any way the status of the waters of the Gulf, or any rights of navigation on the surface of the sea outside of territorial waters. Subsequently Great Britain, by Order-in-Council of August 6, 1942, annexed the submarine areas on its side of the boundary and attached them to Trinidad for administrative purposes; Venezuela was described as having taken similar action in its part of the Gulf.⁸ While these transactions can be supported on other grounds,⁹ the location of the Gulf on the continental shelf makes the arrangement one of particular interest.

* * *

1. *United States of America*

President Truman's proclamation of 1945 made no claim on behalf of the United States to "sovereignty," "title," or "ownership" of the continental shelf. It only declared it to be the national policy to regard the natural resources of the subsoil and sea bed of the shelf as "appertaining to the United States, subject to its jurisdiction and control." The language is reminiscent of the Guano Islands Act of 1856, which provides that under specified conditions guano islands may, "at the discretion of the President of the United States, be considered as appertaining to the United States."¹⁰ The character as high seas of the waters above the shelf, together with the right to their free navigation, was unconditionally recognized, and it was further provided that where the continental shelf extended to the shores

⁶ Imperial declaration of Sept. 29, 1916; Soviet memorandum of Nov. 4, 1924. French texts in V. L. Lakhtine, *Rights over the Arctic* (1928), pp. 43-45.

⁷ Great Britain, *Treaty Series*, No. 10 (1942), Cmd. 6400.

⁸ Great Britain, *Statutory Rules and Orders*, 1942, Vol. I, p. 919.

⁹ See F. A. Vallat, "The Continental Shelf," *British Year Book of International Law*, Vol. XXIII (1946), p. 333.

¹⁰ 11 Stat. 119.

of another state, or was shared with an adjacent state, the boundary should be determined by mutual agreement based on equitable principles.

By the terms of an executive order issued on the same day, the natural resources thus claimed were placed for administrative purposes under the jurisdiction and control of the Secretary of the Interior, pending the enactment of any relevant legislation.¹¹ Neither the proclamation nor the order defined the term "continental shelf," but an accompanying press release described it as that area adjacent to the continent covered by no more than 100 fathoms of water. The order further stated that neither it nor the proclamation should be deemed to affect the determination by legislation or judicial decree of any issues between the Federal Government and the several States regarding the ownership or control of the continental shelf within or outside the three-mile limit.¹²

With respect to the attitude of other governments, it is understood that the substance of the proclamation was communicated to the Governments of Canada, Mexico, the Soviet Union, and the United Kingdom, as the states more directly affected by the United States' claim.¹³ None of these is known to have made any public objection; of the four, only Mexico has announced any similar action of its own.

2. Mexico

On October 29, 1945, the President of Mexico issued a declaration, modelled on the American proclamation of a month earlier, asserting Mexican jurisdiction, protection and control over the continental shelf bordering its territory, and announcing that appropriate legislation, and, if necessary, treaties, would be sought by the government to implement this position.¹⁴ Any intent to challenge legitimate rights of third parties based on reciprocity, or rights of free navigation on the high seas, was expressly disclaimed; the sole purpose of the action was said to be the conservation of resources for "the welfare of the nation, the continent and the world."

Pursuant to its announcement, the Executive subsequently sent proposals for the amendment of Articles 27, 42, and 48 of the Mexican Constitution to both houses of Congress, where they are reported to be pending. The proposals would effect the following alterations. In Article 27, ex-

¹¹ Executive Order No. 9633, Sept. 28, 1945, 10 *Federal Register* 12305. No administrative actions appear to have been taken by the Secretary of the Interior under this order, and no legislation has yet been enacted.

¹² At the time this question was about to be litigated in the case of *United States v. California*, 332 U. S. 19, decided on June 23, 1947. Although action by States of the United States with respect to the continental shelf falls outside the scope of this comment, mention may be made in passing of the Texas Act of May 23, 1947, extending that State's boundary to the edge of the continental shelf. *General Laws of Texas*, 1947, Ch. 253.

¹³ Letter from the Department of State, April 28, 1948.

¹⁴ *Excelsior* (Mexico City), Oct. 30, 1945.

press statements would be inserted declaring direct national ownership not only of the continental shelf and sea bed, but also of the sea waters covering them, to the extent fixed by international law; this would assimilate the status of these waters to that of territorial waters under the present wording of the article. Article 42, defining the national territory, would be amended to include the continental shelf "covered by sea waters up to two hundred meters of depth at the level of the low tide" and the submarine bed of Mexican islands, naming specifically Guadalupe and Revillagigedo in the Pacific Ocean. Article 48 would be re-phrased to provide that islands in both oceans, the continental shelf, and the submarine bed be attached directly to the Federal Government, with the exception of those islands over which the States had theretofore exercised jurisdiction. Except for the reference to international law in Article 27, the actual text of the proposed amendments makes no specific allowance for rights of other states or for recognition of the high seas character of waters above the continental shelf.

3. *Argentina*

Argentina, which has a broad expanse of continental shelf off much of its coast, followed the example of the United States and Mexico about a year later. On October 11, 1946, a decree of the President of the Argentine Republic declared the Argentine epicontinental sea and continental shelf to be "subject to the sovereign power of the nation," but with a guarantee that this would not affect the character of the waters for purposes of free navigation.¹⁵ Reference was made in the preamble to an earlier decree of January 24, 1944, as having asserted categorical sovereignty over the shelf and sea; but this earlier decree in fact only established zones of mineral reserves along the coasts and in the epicontinental sea without mention of the continental shelf or of the basis for its action.¹⁶ The 1946 decree, after referring to the statements of the American and Mexican Presidents as assertions of sovereignty over their respective peripheral seas and shelves (an error with respect to the United States proclamation), went on to describe the doctrine as being "implicitly accepted in modern international law."¹⁷

¹⁵ Decree No. 14,708/46, *Boletín Oficial de la Republica Argentina*, Dec. 5, 1946; English translation in this JOURNAL, Supp., Vol. 41 (1947), p. 11.

¹⁶ Decree No. 1,386/44, *Boletín Oficial*, March 17, 1944.

¹⁷ Professor P. C. Jessup ("Sovereignty in Antarctica," this JOURNAL, Vol. 41 (1947), p. 117) has noted that the doctrine had earlier received some support in writings of modern Argentine jurists, particularly Dr. Ruiz Moreno and Dr. Podestá Costa. Both these writers, though not referring to the continental shelf as a basis for a claim, admit that the bed of the high sea may be acquired through occupation. I. Ruiz Moreno, *Derecho Internacional Público* (1940), Vol. II, p. 49; L. A. Podestá Costa, *Manual de Derecho Internacional Público* (1943), p. 99.

The extent of the shelf and sea claimed by Argentina is nowhere defined in the instrument. This studied lack of precision may be of practical importance in connection with Argentina's Antarctic claims, which comprise a sector bounded by the 25th and 74th meridians west of Greenwich. In support of these, Argentina has laid considerable stress on the argument of geographical propinquity; and though the waters between South America and Antarctica considerably exceed 100 fathoms in depth, there are connecting geological structures between the two land masses which might be brought within an expanded continental shelf doctrine.¹⁸

4. *Nicaragua*

According to press reports, the Congress of Nicaragua on May 1, 1947, adopted a declaration extending the national sovereignty over the adjacent continental shelf, which, on the Atlantic side, is the most extensive in Central America.¹⁹ The text of this act has not been available to the writer, but it is understood to set the boundary of the area claimed at the 200-meter line, thus following the Mexican precedent in fixing a precise limit on a basis of depth.

5. *Chile*

By a Presidential declaration dated June 23, 1947, it was announced that "the Government of Chile confirms and proclaims the national sovereignty" over the continental shelf and the epicontinental sea adjacent to its coast.²⁰ While in the preamble reference was duly made to the prior actions of the United States, Mexico and Argentina as being evidence of international recognition of the validity of such a step, the operative provisions indicate a somewhat different and more ambitious approach. Clearly rejecting any implied limit of jurisdiction at the 100-fathom or 200-meter line, the declaration made an express assertion of sovereignty over the continental shelf regardless of the depth of water, and also over the epicontinental sea regardless of depth and to whatever extent necessary to preserve the natural resources therein. A line 200 marine miles distant from and parallel to the coast was then laid down as the limit of the waters within which Chile proposed to exercise protection and control, but without prejudice to any subsequent changes; a similar zone was also claimed on all sides of Chile's island possessions, presumably including such points as Juan Fernandez, which is some 400 miles from the mainland, and Easter Island, which is more than 2,000 miles distant. The declaration further

¹⁸ It may be noted in connection with Argentine claims that the Falkland (Malvinas) Islands are located on the South American continental shelf, even under the 100-fathom definition.

¹⁹ *New York Times*, May 2, 1947.

²⁰ *El Mercurio* (Santiago), June 29, 1947.

recognized "similar legitimate rights of other states, on the basis of reciprocity," and repudiated any intent to affect "the rights of free navigation on the high seas."

The reasons for Chile's departure from the formula developed in the earlier actions of other states are probably to be found in the facts of its geographical position. The continental shelf, in the strict 100-fathom sense, is narrow along the Chilean coast (as it is along the entire Pacific coast of South America), and a claim thus limited by depth would yield far less than it would yield, for example, off the shores of Yucatan. In advancing a shelf doctrine not thus restricted, Chile may be looking hopefully toward a successful claim to the so-called "Chilean Rise," a high submarine plateau adjoining the coast which, though deeply submerged, is still distinctly set off from the neighboring abysses of the eastern Pacific. In addition, Chile has the same reasons as Argentina for advancing a view with respect to the continental shelf which will lend support to its claim of a segment of the Antarctic between 53° and 90° west longitude.²¹

6. *Peru*

Peru lost little time in following up the action of its neighbor to the south. On August 1, 1947, a Presidential decree was promulgated in terms which adhered closely to those of the Chilean declaration.²² As in the earlier instrument, full sovereignty was asserted over the continental shelf and epicontinental sea regardless of depth, and a similar 200-mile limit for protection and control was established parallel to the mainland coast and around the Peruvian islands. The "right of free navigation of ships of any nation, as per international right," was declared to remain unaffected. Doubtless the form of the claims put forward was governed by reasons similar to those in the case of Chile, inasmuch as Peru has an even narrower coastal shelf above the 100-fathom line, and even greater depths of water close to shore. An additional ground for protecting the fishery resources, however, was advanced in a statement that the fish were an essential food supply of the birds which produced the important guano deposits on islands of the Peruvian littoral.

7. *Costa Rica*

The most recent development to come to the notice of the writer is the action of Costa Rica. A decree-law of July 28, 1948, is reported to have put forth a claim to the continental shelf on both the Atlantic and Pacific coasts of Costa Rica out to a limit 200 miles offshore, regardless of the depth of water. The action therefore appears to follow in form the precedents established by Chile and Peru.

²¹ On his visit to the Antarctic in February, 1948, the President of Chile declared that Chilean territory now "extends from Arica to the South Pole." *New York Sun*, Feb. 24, 1948.

²² Decree No. 781, *El Peruano—Diario Oficial*, Aug. 11, 1947.

8. Cuba

In addition to the foregoing actions, steps of similar character have been under consideration in Cuba, although it is understood that they have not been completed. In December, 1946, legislation was introduced in the Cuban Congress to amend Article 3 of the Constitution by including in the national territory there defined the "insular shelves . . . up to those points at which the depth of the sea is two hundred marine fathoms."²³ The proposed extension of jurisdiction to the 200-fathom line was presumably dictated by the precipitous character of the Cuban insular shelf, which in many places offshore falls steeply. Opposition to the proposal was voiced in some Cuban circles on the ground that it would be of relatively small benefit to the nation because of the narrowness of the shelf, and it was further pointed out that recognition of the doctrine by Cuba might operate to bar Cuban access to shelf areas claimed by neighboring countries.²⁴ This might be of particular importance with respect to fisheries off the coasts of Florida and Mexico.

* * *

This summary of the actions of Latin American states indicates that, while all have relied for support on the United States proclamation of 1945, they have gone considerably beyond their prototype in at least two respects: (1) they undertake to effect a categorical extension of sovereignty over the continental shelf and sea bed; and (2) they propound a further claim to the waters themselves of the epicontinental sea. With respect to the first point, the difference between the United States proclamation and the other declarations is perhaps largely verbal; regarding the sea bed and subsoil, it is difficult to see much distinction in practical effect between sovereignty on the one hand and appurtenance, jurisdiction and control on the other. But with respect to the second point, the differences are more substantial, and indicate divergence in the purposes sought to be accomplished.

The United States proclamation declared it to be the national policy to extend authority over the resources of the sea bed and subsoil of the continental shelf, primarily, petroleum. There was no intent to control, under the shelf doctrine, fisheries or other resources in the sea itself. This was done, in quite a different manner (though perhaps one equally debatable), by another proclamation of the same date as that on the continental shelf. In this instrument the President asserted the right of the United States to establish fishery conservation zones in areas of the high seas contiguous to the coasts of the United States, either unilaterally or in concert with other interested states; the character of the waters as high seas and the right to free navigation were declared to remain unaffected.²⁵ The claim

²³ Cuban press report, Dec. 11, 1946.

²⁴ Gustavo Gutierrez, "*La libertad del mar y las plataformas continental e insular*," *Anuario de la Sociedad Cubana de Derecho Internacional*, 1947, p. 225.

²⁵ Proclamation No. 2668, Sept. 28, 1945, 10 *Federal Register* 12304.

made no reference to the continental shelf, but proceeded on a general theory of the right of a coastal state to protect its contiguous fisheries; the zone concept was doubtless derived from the customs enforcement areas authorized by the Anti-Smuggling Act of August 5, 1935.²⁶

The Latin American states, however, have sought in their actions to achieve both objectives through a single comprehensive claim to the continental shelf and to the waters over it. This assertion of sovereignty goes beyond anything put forward in either of the United States proclamations. It presumably implies, for example, sovereignty in the airspace over the claimed areas—a question of the first importance, for, in the absence of international agreements and conventions, there is no right of innocent passage by air. Even on the surface, though rights of free navigation be recognized in such a claim, there is in the claim itself an infringement, in principle at least, of traditional views on the character of the high seas. It may be debated whether this theoretical impairment is harmful, in view of the desirability of conserving resources and so long as adequate guarantees of free passage, by air as well as by sea, are forthcoming. But recognition of the need for reasonable measures of control within the limits of the geographical continental shelf should not be permitted to beget a distorted application of the continental shelf theory to areas beyond these limits. Claims which expressly disregard depth as a criterion, and which set an arbitrary limit 200 miles at sea, may justly be suspected of employing the continental shelf as protective cover for assertions of a wholly different character. Whether or not a 200-mile limit is desirable, it should not be received under the guise of an application of the continental shelf doctrine unless the geographical facts justify it. Where measures of control beyond the shelf are needed, they should be rested on other and more appropriate grounds.

Any widespread adoption of the continental shelf theory, even when confined within strict factual limits, must result sooner or later in conflicts of jurisdiction between two or more states. Such controversies have not yet arisen only because of the location of the nations which have subscribed to the doctrine, but they are bound to occur if it continues to gain wider acceptance. In many areas of the world, the continental shelf is relatively well defined and presents few difficulties; its seaward edge coincides quite frequently with the 100-fathom depth line which is commonly (though not altogether accurately) spoken of as marking the shelf limit. Elsewhere, however, two kinds of problems may be envisaged: (1) where the shelf is broken and difficult to determine with accuracy; and (2) where whole seas or gulfs, bordered by several riparian states, are located on the shelf.

The first situation may arise, for example, in the area between Maine, Nova Scotia and Newfoundland, where the geological structure is said

to be a submerged extension of the Appalachian mountain system. There submarine valleys dip below the 100-fathom mark, and ridges rise above it; amid such confusion, a high measure of agreement among the interested parties would be essential to any satisfactory application of a shelf theory. The second situation presents itself acutely in European waters, where the English Channel, the North and Baltic Seas, and most of the Adriatic never exceed 100 fathoms in depth. Similar difficulties also occur in the Persian Gulf, in the East Indies, on the China coast, and in Arctic waters: thus, in Behring Strait the continental shelves of America and Asia blend without a break.

The development of the continental shelf doctrine, as well as its possible over-development in some instances, is symptomatic of the widespread dissatisfaction with existing doctrines on maritime jurisdiction. The confused state of the subject, particularly with reference to the marginal sea and to fisheries, has long been common knowledge, more especially since the discussions at the Hague Codification Conference of 1930. Some reconsideration in the light of modern conditions seems imperative, for the effectiveness of international law is not promoted by blind insistence upon antique rules. Regard must be had for new factors, of which one is the increasing importance of the resources in the sea bed and subsoil.

In such a re-appraisal, the continental shelf theory, properly limited, appears to present a realistic approach. It connects the sea-bed resources with the adjacent coastal state, which is best fitted by location and self-interest to make use of them; yet at the same time it places a limit on the legal claim which matches the limit of practical exploitation. The merits of such an accord between practice and theory are not to be underrated. Numerous difficulties, of course, are evident, but no more than any other suggested approach would create, and certainly no more than plague the subject today. The amicable settlement worked out in the Gulf of Paria demonstrates that the problems involved in submarine areas, though intricate, are not insoluble. Many obstacles would vanish if the general principles applicable to the continental shelf were to be authoritatively laid down, and it is suggested that here may be a challenging subject for international legislation.

EDITORIAL COMMENT

THE KASENKINA CASE

On August 12, 1948, Soviet Commissar Molotov published a note¹ protesting against the treatment accorded the Russian school-teachers who seem to have bought tickets on the *S. S. Pobeda*, a boat which sailed for the Soviet Union on July 31st. As far as we can make out, these teachers, three in number, two a married couple and three children, declined to go back to Soviet Russia and underwent various fates since then. The most interesting is that of Mrs. Kasenkina, who jumped from a third-story window in the Soviet Consulate, unknown to Mr. Molotov, and lies now in a bed in Roosevelt Hospital.

Mr. Molotov proceeds from the assumption that Soviet Russia enjoys some sort of extraterritoriality in the United States, for he seems to believe that the Russian Consul was privileged to detain Mrs. Kasenkina against her will and deliver her to another boat sailing for the Soviet Union. This pleasure the lady seems to have resented, or sought to escape, for she jumped from the window with suicidal intent. The Soviet Ambassador seems to have tried to persuade her to sign an affidavit declaring that she was a willing prisoner, and the United States authorities seem greatly to be blamed by Mr. Molotov for permitting this false imprisonment to occur. Some of the facts stated by Mr. Molotov seem to be in doubt. He insists that she was kidnapped by a "White Guard gangster organization," but it seems more probable that she sought refuge in the organization known as the Reed Farm of the Tolstoy Foundation. It is doubtful whether the Russian case is helped by referring to this Foundation as a "White Guard gangster organization."

The Soviet Consul made the mistake of taking her physically from this group. Whether she went voluntarily or not is one of the puzzles raised by the case. The jump from a window might indicate that even if she went of her own free will, she later changed her mind. Mr. Molotov did not know of this change of heart, otherwise he might have written a different note, but throughout there runs a thought that the Russian Consul was empowered to exercise control over a Russian citizen, and that assumption, arising presumably from the Roosevelt-Litvinoff agreement of November 16, 1933,² we must emphatically deny.

Mr. Molotov may have been led into his mistake by the fact that the United States permits a foreign consul to exercise the *jus avocandi* over his fellow nationals, but any control that they might permit a foreign

¹ *New York Times*, Aug. 13, 1948, p. 3.

² *This JOURNAL*, Supp., Vol. 28 (1934), p. 2 *et seq.*

consul to exercise is based on voluntary consent, and nothing in American law permits a foreign consul to imprison a fellow national. The offense committed by the Russian Consul entitles the United States to withdraw his exequatur. The action of the Soviet Ambassador in endeavoring to get Mrs. Kasenkina to sign an affidavit to the effect that she was detained of her free will seems a little more severe than the offense of Lord Sackville-West in writing the Murchison letter for which he was expelled as British ambassador in the last century.³ One lesson that the State Department ought to give to all persons concerned in the case is that foreign consuls, including the Russian Consul, do not enjoy extraterritorial control over their fellow nationals in this country and that any attempt at the exercise of false imprisonment is punishable by American law.

What is to be done with the Russian teachers is determinable by American authorities and not by Russian.

There seem to be Russian citizens in many countries who have no desire to go back to the Soviet paradise. Perhaps the foreign ministers will have to meet again to determine how these refugees shall be dealt with in the light of existing immigration statutes.

This editorial was written on August 15, 1948 after receipt of the Molotov note but before there were any further developments in the case.

EDWIN BORCHARD

THE PALESTINE PROBLEM BEFORE THE UNITED NATIONS

In the two months between the going into effect of the truce in Palestine in the middle of July, 1948, and the meeting of the General Assembly of the United Nations in Paris in the middle of September, there occurred a lull in the discussion of the problem and—with the exception of sporadic fighting in Palestine more or less in violation of the truce on both sides—in action connected therewith. This permits what may be a useful review and appraisal of the situation at the time of the meeting of the General Assembly of 1948.

The question was brought before the United Nations in April 1947, by Great Britain, it will be recalled, under Article 10 of the Charter. The United Nations was asked to investigate the situation, study the problem, and recommend a solution. At once the Arab states protested that to speak of a Palestine problem was to distort the issue and that the admission of other considerations—refugees, religious interests, and so on—into the discussion was likewise improper. According to this view the only issue was that of termination of the Mandate, and independence for Palestine, presumably under majority (Arab) democratic rule.

From a strictly logical or legalistic point of view the Arab position has much to be said for it, and in what follows we shall be chiefly concerned precisely with legal and procedural aspects of the situation; but obviously

³ Moore's *Digest of International Law*, Vol. 4, p. 536.

such a position contributes little to the handling of a practical situation. It is in the actual circumstances utterly unrealistic and was rejected overwhelmingly by United Nations members.

On the other hand, the United Nations entered the scene almost entirely with the object of preserving peace, not of solving the Palestine problem. Or rather its jurisdiction in the premises was based on the consideration of maintaining peace, and anything done on the merits of the case must be related to that end and adopted voluntarily by the parties concerned. The United Nations has no right to dictate a solution in Palestine unless a basis for such authority can be worked out such as has not been done thus far.

Such a basis might be found by holding that sovereignty over Palestine, relinquished by Turkey in the Treaty of Lausanne, passed to the League of Nations, and has been inherited by the United Nations, a proposition which involves two hazardous steps. Or it might be held that the Mandate is still in force and that supervision thereof has passed to the United Nations, which is much more realistic but still somewhat hazardous juridically. The Arabs deny the binding force of the Mandate, now or ever, as they deny the validity of the Balfour Declaration on which it was based, and again they are probably quite correct juridically. In any case it would be politically very difficult if not impossible for the United Nations to dictate a solution in Palestine not acceptable to both Arabs and Jews, and practically impossible to execute such a program in the absence of United Nations armed forces.

More than once the suggestion was made that the question of United Nations jurisdiction over the Palestine situation be referred to the International Court of Justice, but this proposal was voted down. Given the obstructionist motives back of the proposal and the fears of its opponents, it is hard to quarrel with this decision, yet it tends to confirm the avoidance of international law in dealing with international problems manifested only too often in the history of Great Power behavior in the United Nations. It is, moreover, highly possible that the International Court of Justice would have rendered a liberal opinion in the matter—along the lines of the Tunis-Morocco Nationality Decrees case—and liberal construction is just what the United Nations needs at this stage.

As is well known, the Special Commission on Palestine, authorized by the General Assembly in May, after three months of investigations in Palestine, neighboring regions, and Europe, and intense study and discussion, recommended a program of action for Palestine which consisted mainly of a termination of the Mandate, partition of the country into a Jewish and an Arab state, United Nations Trusteeship for Jerusalem, economic union, guarantees of individual rights, and membership in the United Nations. The General Assembly itself adopted this report, after a few modifications favorable to the Arabs, still, however, as a recommendation, not feeling sure of any authority to impose it. Opposition was strong on

both sides, although it was Arab opposition which led, in May of this year, to practical abandonment of the plan rather than an attempt to enforce it with totally inadequate physical power, not to mention legal or moral authority.

The bitter antagonism of Jews and Arabs on the spot, supported by Zionists and Mohammedans outside, thus constituted the chief obstacle to United Nations settlement of the problem in 1947-1948. On the other hand, the policies of the three leading Powers did not help much. The United States came close to exercising undue influence to get the partition plan adopted and then dropped it on the basis of exaggerated ideas of Arab opposition; and on May 15 we recognized—only *de facto* it is true—the aspirant state of Israel. Russia, while behaving through the whole controversy in a surprisingly restrained and balanced manner, also recognized Israel, and recognized it *de jure*.

Great Britain had from the first tried to eliminate herself from the discussion. She seemed to feel that by confessing total failure—in spite of having given birth to the whole problem in the closing years of World War I—she could also escape all responsibility. She was not to be held for much if any aid in carrying out any United Nations plan adopted, particularly if it conflicted with her convictions or policy. This attitude was based, evidently, on the assumption that the United Nations had little or no right to decree or command anything in Palestine, even peace and order!

In United Nations organs, on the contrary, and among United Nations Members in general, the tone of discussion was excellent, in spite of the delicacy of the issue and the passions enlisted. The press did little to assist this treatment and much to hamper it and inflame the issue. By refraining from brusque or harsh action, by the services of a skillful and persistent and likewise balanced Mediator for Palestine, the United Nations has at least reduced violence in the land of the Prince of Peace to a minimum—in the spring, by appeals, and in summer, by command (resolution of July 15 under Chapter VII of the Charter)—and perhaps paved the way for solution in substance by agreement between the parties. Success along these lines would be a tremendous feather in the United Nations cap.¹

PITMAN B. POTTER

CONFLICTS OF JURISDICTION IN RESPECT OF DIVORCE AND SEPARATION

Conflicts of jurisdiction in the matter of divorce and separation represent a serious politico-economic problem under the conditions of population resulting from World War II. Vast numbers of displaced persons and refugees are living in countries as aliens or stateless persons forcibly prevented from returning to their homelands or unwilling to do so for political

¹ The assassination of Count Folke Bernadotte, United Nations Mediator for Palestine, by Jewish extremists on Sept. 17, 1948, confirms much which is said above. His final report, rendered to the General Assembly, did not alter the situation appreciably.

or other reasons. Accordingly, the fact that the Institute of International Law devoted a large part of its recent session held at Brussels, July 27, to August 3, 1948, to the consideration of this question, is not to be explained merely by its interest in solving a problem of academic interest. The national law of the spouses still continues to exert a predominant influence in many civil-law countries both as to jurisdiction and as to the grounds for divorce or separation. This often causes a chaotic condition in the family relations of displaced persons which has aroused the sympathetic attention of jurists both for humanitarian reasons and because of the disturbance to public order and decency.

The provisions of the Hague Convention of 1902 relating to the Conflicts of Law in Matters of Divorce and Separation had introduced a compromise between the jurisdiction of the domicile and that of the nationality of the parties by permitting action to be brought at the domicile if the national law recognizes divorce as an institution. A divorce or separation may be granted only for grounds sufficient both by the national law of the spouses and by the law of the forum (Arts. 1-2). Since the ratification of the Hague Convention, the right of the wife to retain her nationality of origin has been recognized in a number of countries. However, Article 8 of the convention provides that if the spouses are not of the same nationality, the system of law last common to each shall be considered their national law. Accordingly, where the wife returns to her country of origin after a rupture of family relations, she is unable to maintain an action for divorce or separation in most cases because the last conjugal domicile is in the national home of the husband. The inequality of the sexes with respect to recognition of national law thus found to exist in the practical application of the convention, caused it to be denounced by Switzerland in 1929, and later by Germany, Sweden and some other countries.

The solution adopted by the Institute at its Brussels session after discussion of an able report prepared by Professor H. C. Gutteridge of Cambridge University, permits an action for divorce or separation to be brought either before a court of the nationality of either of the spouses, or of the country of habitual residence of either of the spouses, provided such residence has continued for at least three years before the beginning of the action.

The problem of jurisdiction for divorce and separation as it presents itself in international relations is complicated by the fact that in many countries the marriage relation and its dissolution, in whole or in part, are matters considered to be, as they originally were in English law, within the jurisdiction of the established church. Even where marriage is declared to be a civil contract, as in France, legislative policy requires that recognition be given to the religious sensibilities of a large section of the population. Accordingly, no divorce will be granted where the national law of the parties does not recognize divorce as a legal institution within the competence of the courts. The draft of the Institute provides that

where the spouses are of different nationality, a divorce may be pronounced by a court of the country of habitual residence, if one of the parties is a national of that country. Furthermore, the grounds for divorce follow the law of the forum. Here again a concession has been made to the conception of Anglo-American jurisprudence in contradistinction to the predominant rule of the Continent of Europe under which divorce will not be granted except upon some ground recognized by the national law of the parties.

A special provision in the draft of the Institute permits persons who have been forced to abandon their country of origin or residence to bring an action for divorce or separation before a court of their actual residence according to the law of that court. In these cases, however, the judgment will not be compulsorily valid in any other country but will remain subject to the general rules concerning recognition of foreign judgments.

The draft of the Institute is not intended as a convention for immediate adoption but as part of a timely movement for compromise between conflicting systems. The concession made to the national law of the parties to the extent that this law must recognize divorce as an institution may seem strange to jurists of the Anglo-American tradition. However, it is in line with endeavors made also in Latin American countries to effect a compromise between domiciliary and national jurisdiction. The Bustamante Code ratified by fifteen Latin American nations represents the practical results of these endeavors because it permits action to be brought at the last conjugal domicile of the spouses. This compromise is enfeebled, however, by a provision (Art. 52) that the national state is not *obliged* to recognize the validity of a divorce obtained by its citizens abroad. An attempt to strengthen the effect of domiciliary decrees has been made by the Draft Convention of Montevideo of 1940 (Art. 15) which would limit the power to refuse recognition unless the country of celebration of the marriage does not recognize divorce as an institution.

The draft of the Institute may be regarded as attempting to meet certain post-war conditions which may gradually disappear. However, it is also a contribution to a movement noticeable in civil-law countries of both hemispheres to effect a compromise between national and domiciliary jurisdiction. Accordingly, it is not without significance also for Anglo-American jurisdictions as an approach to the possibility of international recognition by convention or uniform legislation, however far distant the future now appears for a legislative "One World" in this field.

ARTHUR K. KUHN

THE RECOGNITION OF DE FACTO GOVERNMENTS

No one who has followed the problem of the recognition of *de facto* governments in America during the past twenty years or more could have been surprised that the Conference at Bogotá failed to reach a solution of

it. The Juridical Committee of Rio de Janeiro, to which the question had been referred by the Conference at Mexico City in 1945, had failed to submit a report upon it, and without a report to serve as a working basis there was no hope that the Conference could formulate principles upon a matter which touched almost every member of the Conference at a sensitive point. The result was that the Conference adopted a resolution, XXXVI of the Final Act, observing that the Juridical Committee had not submitted its report and assigning to the new Inter-American Council of Jurists "the preparation of a project and a report on the recognition of *de facto* governments, to be studied by the Tenth Inter-American Conference."

Two projects dealing with the question of the recognition of *de facto* governments had been submitted to the Juridical Committee by the Conference on Problems of War and Peace held at Mexico City in 1945. One, entitled "Defense and Preservation of Democracy in America Against the Possible Establishment of Anti-Democratic Régimes in the Continent," had been presented to the Conference by the Guatemalan Delegation, and it called for the adoption of a recommendation that the American Republics should abstain from granting recognition to and maintaining relations with "anti-democratic régimes" which, in the future, might be established in any of the countries of the hemisphere, and further that the standard by which to identify such régimes should be the degree to which the popular will might have contributed to their establishment. The Juridical Committee reported adversely on this project, chiefly on the ground that it was inconsistent with the established principle of non-intervention.

The second project, presented by the Delegation of Ecuador, was in exactly the opposite sense. It recited in a lengthy preamble the objections against the procedure of recognition as a procedure, and then laid down the rule that "the custom of recognizing *de facto* Governments in the system of reciprocal relations of the American Republics is abolished." Here again, as in the case of the Guatemalan project, the Juridical Committee was of the opinion that the project should not be favorably recommended; but while agreeing that the procedure of recognition of new governments could not be thus summarily dismissed, the Committee was unable to agree upon a positive rule setting forth the conditions under which recognition should be granted. Hence it made no report to the Bogotá Conference on the subject.

The program of the Bogotá Conference contained a separate chapter on "Juridico-Political Matters," one item of which was the recognition of *de facto* governments. The subject was assigned to the Sixth Commission of the Conference, and it immediately became apparent that it would be difficult to reconcile the divergent opinions of those who wanted to deny to third states every element of inquiry into the circumstances under which a new government might come into existence and those who be-

lieved that third states must of necessity make such an inquiry if they are to decide whether the new government is entitled to represent the state. The United States Delegation introduced a resolution directed against the abuse of the procedure of recognition, which it was hoped might avoid the necessity for a decision upon the points in controversy. The resolution, entitled "Exercise of the Right of Legation," declared that the right of maintaining, suspending or renewing diplomatic relations with another government shall not be exercised as a means of individually obtaining unjustified advantages under international law, and that the establishment or maintenance of diplomatic relations with a government does not imply any judgment upon the domestic policy of that government. The chief offender in the past had now publicly repented; and the advocates of the abolition of the procedure of recognition were ready to postpone further action in the matter by referring it to the new Inter-American Council of Jurists.

It should not be too difficult for the Council to formulate the broad principles by which the recognition of a new government is to be determined. For these principles are well established, and the difficulty of applying them has been due more to the fact that the application has been carried out by each state, acting at times upon political motives, rather than by the inter-American community as a whole. Has the new government the requisite stability to warrant third states in taking it as the legal representative of the people as a whole? This of necessity must involve some inquiry into the domestic conditions of the state; but if the inquiry be strictly limited to the facts of the case, there need be no question of violating the principle of non-intervention.

The subjective test of the willingness of the new government to meet its international obligations is one which under normal circumstances might be satisfied by the perfunctory declaration of the new government that it has the intention of meeting them. That declaration might, indeed, under ordinary circumstances be dispensed with, on the ground that a new government, although coming into power by methods contrary to the established procedures of the national constitution, is successor at law to the obligations assumed by the preceding government in the name of the state. But even when the declaration of willingness to observe international obligations is regarded as of importance in view of the circumstances under which the new government has come into power, the declaration should be limited to the obligations incumbent upon all states as members of the international community, and should not be made the occasion, as proclaimed by the resolution introduced by the Delegation of the United States at Bogotá, for obtaining special advantages for a particular state not coming within the general rules of international law.

Whether the Council of Jurists may not work out some procedure of collective recognition by the whole inter-American regional group of

states, acting possibly through the decision of the Council of the Organization following consultation between the foreign offices, is another problem. The resistance of a number of states to that procedure is greater than would be expected by those who have not followed the problem closely. Apparently it will take some time before sufficient confidence can be developed in the decisions of the Organization in other fields to overcome the objections of states who find "collective intervention" as objectionable as the arbitrary action of the individual state. Consultation between foreign offices in advance of a decision by the individual government is, perhaps, as far as the American States are as yet ready to go.

C. G. FENWICK

A MODEL CONSULAR CONVENTION

The Consular Convention concluded between the United States and Costa Rica on January 12, 1948, is of interest because of the extensiveness and detail of its provisions and because of the fact, noted by the Department of State in releasing the text, that it will serve as "a model for agreements with other countries whose consular activity is now based on custom and usage, or outdated agreements."¹

An examination of the text indicates that this convention is based upon the consular provisions (Articles 17-30) in the Treaty of Friendship, Commerce, and Consular Rights between the United States and Germany of December 8, 1923.² There are, however, rearrangements of the articles and a number of additions, including provision for revocation of exequaturs (Article 1, paragraph 4); notification by the receiving state of names of consular employees (Article 1, paragraph 5); permission to combine consular and diplomatic functions in the same officer (Article 1, paragraph 7); exemptions of consuls for acts within the scope of official duties (Article 2, paragraphs 2, 3); protection of consular residencies (Article 2, paragraph 7); right of sending state to acquire property for consular purposes and to erect buildings thereon (Article 5, paragraphs 1, 2); right of consuls and their fellow nationals to communicate with each other; and right of consuls to visit fellow nationals who have been arrested and to be notified of such arrests (Article 7, paragraphs 2, 3).

In making some of these additions the drafters may have been influenced by the Draft Convention on the Legal Position and Functions of Consuls prepared by the Harvard Research on International Law in 1932.³ The latter, for example, emphasized the exemption of consuls for official acts (Article 21) and the right of consuls to communicate with their nationals and to visit them if arrested (Article 11, paragraph D). The immunity for official acts, which probably exists in customary international law,⁴ pre-

¹ Department of State *Bulletin*, March 7, 1948, Vol. 18, p. 314.

² Treaty Series No. 725; this JOURNAL, Special Supp., Vol. 26 (1932), p. 434.

³ This JOURNAL, Special Supp., Vol. 26 (1932), p. 193 ff.

⁴ *Bigelow v. Princess Zizianoff*, France, Cour d'appel de Paris, 1928, *Gazette du Palais*, May 4, 1928, No. 125; this JOURNAL, Special Supp., Vol. 26 (1932), p. 339 ff.

sents some difficulties in interpretation. The Costa Rican convention provides:

A consular officer or employee shall in civil proceedings be subject to the jurisdiction of the courts of the receiving state except in respect of acts performed by him within the scope of his official duties. He shall not, however, be permitted to assert that an act was performed by him within the scope of his official duties in any case where a third party shall have been injured as a result of negligence, for which the officer or employee would be responsible under local law, or had reason to believe that the officer or employee was acting in his personal capacity.

A consular officer or employee may be required to give testimony in either civil or criminal cases, except as to acts performed by him within the scope of his official duties, or as to any matter cognizable by him only by virtue of his official status. (Article 2, paragraphs 2, 3.)

The Harvard Research Draft provides:

A receiving state shall exempt a person from liability and from its judicial and administrative jurisdiction for an act done by him while he was consul in the performance of consular functions which he was entitled to exercise; the receiving state decides, subject to diplomatic recourse by the sending state, whether the act was done in the performance of such functions.

By inserting the qualifications "which he was entitled to exercise" and by leaving primary decision to the receiving state, this drafting gives precision to points which may be causes of controversy and makes unnecessary such specific limitations as those stated in the Costa Rican convention. It also recognizes the general principle, relied upon by the Nuremberg Tribunal, that an individual cannot claim exemption on the ground of "act of state" for his acts beyond the competence of the state to authorize under international law. Furthermore it makes it clear that the exemption extends to liability as well as jurisdiction, thus barring action after the individual has ceased to be a consul.

The Harvard Research Draft deals with a number of matters not touched in the United States-Costa Rican convention, such as the effect of the sending or receiving of consuls on recognition (Article 6); the function of consuls in respect to passports and visas, registration of nationals, and study of conditions (Article 11, paragraphs B, C, and K); the duty of the receiving state to notify consuls of the detention of vessels of the sending state (Article 14); the extradition of consuls (Article 28); and the general duty of consuls to observe local law (Article 29) and to refuse asylum to fugitives from justice (Article 32). In practice consular asylum has frequently been given in Latin America, so perhaps there was reason for not including this usual principle of consular law.

* The problem concerning extradition has arisen particularly because of the possibility that a consul entrusted with the administration of the estate

of a national may abscond with the proceeds and claim immunity from local jurisdiction on the ground that his acts were in pursuance of an official function, and also immunity from extradition to the sending state on the ground that his act was not committed in the territory of that state.⁵ The United States-Costa Rican treaty meets this problem in part by specifying that a consul administering an estate "subjects himself in his capacity as administrator to the jurisdiction of the court making the appointment for all necessary purposes to the same extent as if he were a national of the receiving state" (Article 9, paragraph 4). Consequently, he could not claim an exemption on the grounds of official act.

In form the United States model treaty is far more wordy than the Harvard Research Draft. The latter makes use of definitions (Article 1) to avoid the repetition of descriptive terms; subordinates many functions in a general article to avoid the repetition of qualifications applicable to all (Article 11) and deals in special articles with the limitations on consular privileges and immunities applicable to career consuls, to consuls who are nationals of the receiving state (Article 26) and to consular employees (Article 27). In the United States-Costa Rican model treaty the phrase "a consular officer who is a national of the sending state and not engaged in a private occupation for gain in the receiving state" is repeated half a dozen times and the phrase "by the receiving state or by any state, province, municipality, or other local subdivision thereof" is repeated even more frequently. Because of such carelessness on matters of form the United States model convention, without, it is believed, more matter or more precision, contains twice as many words as does the Harvard Research Draft Convention.

The United States-Costa Rican treaty is in line with the trend to give detailed conventional form to consular functions, privileges, and immunities and to enlarge these privileges and immunities considerably beyond those which exist in customary international law. A model form for such conventions is certainly desirable, but it is believed that a careful comparison of this model with the Harvard Research Draft might suggest some improvements both in substance and form.

QUINCY WRIGHT

PAN EUROPE, THE MARSHALL PLAN COUNTRIES AND THE WESTERN EUROPEAN UNION

Current developments in Europe often provoke the question: Are these steps toward Pan Europe? As an idea, Pan Europe is old, even if it must be admitted that the long series of utopian proposals¹ for eternal peace

⁵ Harvard Research, this JOURNAL, Special Supp., Vol. 26 (1932), p. 359.

¹ See W. Schücking, *Die Organisation der Welt* (1908); Jacob Ter Meulen, *Der Gedanke der internationalen Organisation in seiner Entwicklung*, Vol. I, 1800-1800 (The Hague, 1917); Vol. II, Part I, 1789-1867 (1929); Vol. II, Part II, 1867-1889 (1940).

from Pierre Dubois (1305) to Abbé de St. Pierre and Kant (1795) are rather proposals for a universal than for a regional organization. But in the century between the end of the Napoleonic wars and the outbreak of World War I (1815-1914), the idea of a European Union in a regional, continental sense was strongly propagated.² Mazzini, Victor Hugo,³ Renan, Bluntschli,⁴ Marchand,⁵ Malardier,⁶ Lemmonier,⁷ Schlieff,⁸ Steads,⁹ Novicov,¹⁰ Sir Max Waechter¹¹ may be named as protagonists. Already in this period, the United States of America is held up as a model, sometimes also Pan America.¹² While the idea of Pan Europe was still alive¹³ when World War I broke out, developments during the war led to a victory of universalism over regionalism and to the formation of the League of Nations.

In the inter-war period, the Pan European idea received a new impetus through Alvarez' writings in favor of a continental regionalization of the League,¹⁴ and through the efforts of the Austrian Richard Coudenhove-Kalergi,¹⁵ founder of the Pan Europe movement and of the monthly Journal *Pan Europa* (1924). It was, perhaps, also due to his influence that Aristide Briand presented the French Pan Europe memorandum of May 1, 1930, to the League of Nations.¹⁶ The step led to no result. In

² See P. Renouvin, "Les idées et les projets d'Union Européenne au XIX^e siècle" in *Conciliation Internationale*, No. 6, Paris, 1931, pp. 27-47; H. Wehberg, "Ideen und Projekte betreffend die Vereinigten Staaten von Europa in den letzten 100 Jahren," in *Friedens-Warte*, Vol. XLI, No. 2-3 (1941), pp. 49-122.

³ *Les États-Unis de l'Europe* (1849).

⁴ *Die Organisation des europäischen Staatenvereines* (1878).

⁵ *Nouveau projet de paix perpétuelle* (1842).

⁶ *Confédération européenne* (1861).

⁷ *Les États-Unis d'Europe* (1872).

⁸ *Der Friede in Europa* (1892).

⁹ *The United States of Europe* (1899).

¹⁰ *La Fédération de l'Europe* (1901).

¹¹ *Der europäische Bund* (1907).

¹² Thus, in Europe, A. H. Fried; in the Americas, Alejandro Alvarez.

¹³ See N. M. Butler, *The United States of Europe* (New York, 1914).

¹⁴ See also P. Hutchinson, *The United States of Europe* (Chicago, 1929).

¹⁵ *Pan Europa* (1923).

¹⁶ *Commission d'étude pour l'Union européenne, Procès-verbaux des sessions*, Vols. I-VI. Literature: J. Lambert, "Les États-Unis de l'Europe et l'exemple américain" in *Revue Générale de Droit International*, 1929, p. 396; G. Scelle, "Essai relatif à l'Union Européenne," *ibid.*, 1931, pp. 521-563; L. LeFur, "Les conditions d'existence d'une Union Européenne," in *Revue de Droit International*, Vol. VI (1930), pp. 71-96; the articles by C. R. Pusta in the same review, 1930, pp. 97-122, and 1931, No. 4; "Union Européenne: Réponses des gouvernements," *ibid.*, 1930, pp. 280-325; A. Cordier, *European Union and the League of Nations* (Geneva Special Studies, Vol. II (1931), No. 6); R. Mamel, *L'Union Européenne* (Paris, 1932); C. Bilfinger, "Das Briand Memorandum," in *Europäische Revue*, Vol. VI (1930), pp. 478-486; C. Balli, *Essai sur le problème de l'Entente Européenne* (Paris, 1932); R. Riedl, *Die Vereinigten Staaten von Europa als konstruktives Problem* (Berlin, 1933); E. Van Ralte, *De*

addition, the problem of a European Customs Union was defended during this period.¹⁷

During the Second World War, the idea of Pan Europe was upheld in Great Britain¹⁸ and in the United States;¹⁹ even a federation of Western Europe was proposed in this country as early as 1940.²⁰ Coudenhove-Kalergi indefatigably carried on his idea of Pan Europe in the United States.²¹ But it is primarily since the end of actual fighting in 1945 that the idea of Pan Europe has gained momentum, first of all in Europe itself. And this is easily understandable. For the outcome of World War II was not the defeat of Germany, but the defeat of Europe. Europe was left prostrated, weary, hungry, powerless. The fact that there is no longer a single great Power in continental Europe, and that Great Britain is upholding her position as a great Power only with the utmost difficulty, has made of Europe, in Secretary Marshall's words, "a political and economic vacuum." The only two real great Powers of today are non-European. Traditional European colonialism has come to an end, too. One might well speak of the "finis Europae,"²² in the sense that Europe has lost definitively its position as the leading continent of the world. Europe, in Arnold Toynbee's words,²³ has been "dwarfed." The "dethronement" of Europe threatens the survival of our culture which is European.²⁴ Naturally, great anxieties are in the heart of Europeans, often voiced by the neutral Swiss,²⁵ and it is recognized everywhere that the only possible salvation lies in European union.

Volkenbond en de Vereenigde Staten van Europa (The Hague, 1933). For Pan Europe in general, see the book by R. Léonard, *Vers une organisation politique et juridique de l'Europe* (Paris, 1935).

¹⁷ J. Wolf, *Europäische Zollunion* (Berlin, 1926); H. Truchy, "L'union douanière européenne," in Hague Academy of International Law, *Recueil des Cours*, 1934, Vol. II, p. 5.

¹⁸ David Davies, *Federated Europe* (London, 1940).

¹⁹ A. Bingham, *The United States of Europe* (New York, 1940); A. Brecht, in *Harvard Law Review*, Vol. 55 (1942), p. 561; A. C. Weinfeld, *Towards a United States of Europe* (Washington, 1942).

²⁰ W. J. Jennings, *A Federation for Western Europe* (New York, 1940).

²¹ R. N. Coudenhove-Kalergi, *Crusade for Pan Europe* (New York, 1943).

²² Eric Fisher, *The Passing of the European Age* (Cambridge, Mass., 1943); E. Lengyel, "The Wreck of Europe," in *The Annals*, May, 1948, pp. 13-22.

²³ "Instead of being a centre from which energy and initiative radiate outwards, Europe has become a centre upon which non-European energy and initiative converge. Europe's will no longer decides European destiny. Her future lies on the knees of the giants who now overshadow her. . . ." For "today, in the arena of naked power politics, the United States and the Soviet Union face one another alone." (A. Toynbee, *Civilisation on Trial* (New York, 1948), pp. 124-125.)

²⁴ Already in 1928, Salvador de Madariaga had written that "only a few years remain, if we want to save Europe. And Europe is equivalent to culture." "If Europe goes bankrupt, all goes bankrupt," stated Sir Walter Layton.

²⁵ See, e.g., G. Rigassi, "Fin de l'Europe?" in *Revue de Droit International* (Sottile), Vol. XXIII (1945); L. Haas, "Europa—was nun?" in *Schweizer Annalen*, Vol. III (1946-47), No. 11, pp. 615-623.

Books have been published on this subject,²⁶ journals dedicated to this topic have been founded in Europe.²⁷ Movements for European union have sprung up. But these movements are of two different kinds:²⁸ The first type thinks only of Western Europe;²⁹ thus, Paul van Zeeland's "Independent League for European Coöperation"; thus, the movement headed by Winston Churchill.³⁰ The second type wants a union of all Europe. On December 15, 1946, there was founded in Paris the *Union Européenne des Fédéralistes (UEF)* which held its first congress in Amsterdam in April, 1947, followed by the meeting of Montreux.³¹ This movement rejects a mere Western union; the whole of Europe must be united—or no intégration at all, not even "in the hope that." Europe, it is stated, must never yield to American or Russian influence. Only the whole of Europe can be integrated; otherwise, the fact that the two halves of Europe are integrated with antagonistic world Powers would not unite Europe, but divide it more than ever. A wholly united Europe would be "the third Great Power." United Europe must have the will and the power to remain neutral in a possible conflict of the giants. These private movements have, up to now, culminated in the "Congress of Europe," held at The Hague in May, 1948, at which Churchill addressed a great speech³² to all of Europe. But the official steps taken are rather in the direction of a union of Western Europe only, a consequence of the great political split between East and West.

The United States has, from the very moment of the end of actual fighting, given generous help to Europe in many ways. But new horizons were opened by the now famous speech of Secretary of State Marshall at Harvard University on June 5, 1947, in which he proposed "a cure rather than a palliative; future reconstruction aid should be fitted into a well-integrated plan which would make the European nations self-supporting." The initiative, he stated, must be left to the Europeans. The "Marshall Plan,"³³ now officially known as the European Recovery Program (ERP), was born.

²⁶ See, e.g., U. Compagnola, *Repubblica Federale Europea* (1946).

²⁷ *Europa, Organ der Europa Union* (Basle), Vol. XV (1948); *Neues Europa* (Munich), Vol. III (1948); *L'Action Fédéraliste Européenne* (Neuchâtel), Vol. III (1948); *Stati Uniti d'Europa* (Rome), Vol. I (1947).

²⁸ J. F. Köver, "Die Föderalistische Bewegung auf neuen Bahnen," in *Friedens-Warte*, Vol. XLVII (1947), pp. 170-176.

²⁹ Thus also J. W. Fulbright, "A United States of Europe?" in *The Annals*, May, 1948, pp. 151-156.

³⁰ See his now famous speech of Sept. 19, 1946, at the University of Zürich, elaborated in his speech of May 14, 1947, at Albert Hall in London.

³¹ *U.E.F., Rapport du premier Congrès annuel de l'U.E.F.*, Aug. 27-31, 1947, Montreux (Geneva. Pp. 141).

³² *New York Times*, May 8, 1948, p. 6; resolutions of the Hague Congress in *Friedens-Warte*, Vol. XLVIII/3 (1948), pp. 178-183.

³³ Rub. O. Harinett and Tibor Payzs, *The Marshall Plan* (New York. Pp. 61).

Further events are so well known that they only need the immediate initiative of Foreign Minister Bidault and Bevin in inviting Russian Foreign Minister Molotov to Paris on June 27, 1947. It ended in failure. The Soviet ERP, allowed no country behind the "Iron Curtain" founded the "Cominform"; the Czechoslovak coup folk parties in France and Italy try to sabotage the ERP. A Soviet Union seems determined to wreck the ERP, even war; the Berlin blockade has created a situation of the u

Undeterred by the Soviet refusal, Bevin and Bidault pean nations—except Spain—to a conference held in Pa Sixteen countries⁸⁴ responded. The Conference set up European Economic Coöperation (CEEC) as well as tech The General Report of the CEEC⁸⁵ was published at the 1947. Steps taken on this side of the Atlantic⁸⁶ led to operation Act of 1948.⁸⁷ The Act also sets up the Ecor Administration (ECA).⁸⁸

The ERP brings up interesting and somewhat new pr tional law.⁸⁹ Still more interesting are the new problem

⁸⁴ Austria, Belgium, Denmark, Greece, Iceland, Ireland, Italy, Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey, France. To them must be added the three western zones of occ cently the Free Territory of Trieste was admitted to the Organi Economic Coöperation (*New York Times*, July 14, 1948, p. 11).

⁸⁵ SEEC, Vol. I, *General Report*, Paris, Sept. 21, 1947 (Departm tion 2930, European Series 28, 1947. Pp. 138); Vol. II, *Techni* 2952, European Series 29. Pp. 552).

⁸⁶ Appointment of three committees by the President on June sented the following reports: *European Recovery and America* 1947. Pp. 286); *National Resources and Foreign Aid* (Washing *The Impact of Foreign Aid upon the Domestic Economy* (Wa 67)); adoption of the European Interim Aid Act of 1947, autl "so that the United States may extend emergency assistance to Italy." *The Interim Aid Program*, 80th Cong., 1st sess., Nov. *Hearings before the Committee on Foreign Relations U. S. Sen* sess. (Washington, 1947. Pp. 272); Senator Vandenberg's report (Report No. 771. Pp. 16); the President's Message to the Cor (Department of State Publication 3022, Economic Coöperation S February, 1948. Pp. 20). See also Sen. Doc. No. 111, 80th C (pp. 211); *Hearings before the Committee on Foreign Relation* Cong., 2nd sess., January, 1948 (pp. 532).

⁸⁷ Public Law 472, 80th Cong., Ch. 169, 2nd sess., S. 2202 (pp

⁸⁸ Administrator, Mr. Paul Grey Hoffman; a Deputy Administra Public Advisory Board and a U. S. Special Representative in Averill C. Harriman).

⁸⁹ See Ernest A. Gross' address before the American Society (Department of State *Bulletin*, Vol. XVIII, No. 467 (May 2, 1948 *Proceedings, American Society of International Law*, 1948, p. 84.

law brought about by recent developments in Europe: Cu the Permanent Organization for European Economic Coöper Western European Union.

I. *Customs Union.* The only regional customs union alre is that between Belgium, The Netherlands and Luxembourg . Other regional customs unions are under study between the Kingdoms,⁴¹ between Greece and Turkey, between France The Paris organization is studying the idea of a customs uni Marshall Plan countries.⁴² It is clear that the carrying out meets great difficulties. At the best, only slow progress can

II. *The Permanent Organization for European Economic* established by the corresponding convention of April 15, convention shall come into force upon the deposit of ratificati than six of the members (Art. 24, par. 1), but shall be put in in order to avoid delay, on signature on a provisional basis (2). The organization has the familiar tripartite scheme of Council,⁴³ composed of all the members (Art. 15); the Exe mittee,⁴⁴ consisting of seven members designated annually by (Arts. 15, 16); and the Secretary General,⁴⁵ appointed by (Art. 17 and Annex); the former appoints the necessary staf retariat (Art. 18) and presents to the Council an annual budg The organization has its headquarters at Paris (Art. 21). Le and privileges and immunities clauses (Art. 22) are modell United Nations Charter. The organization shall establish t relations with the United Nations, its principal organs and organizations (Art. 22).

The coöperation is limited to coöperation in the economic fle The immediate aim is to ensure the success of the ERP (Ar obligations of the members are: that they will, individually tively, promote with vigor the development of production (A up general programs for the exchange of commodities and se 3); develop in mutual coöperation the maximum possible in

⁴⁰ The exchange of ratifications of their customs union agreement Brussels on Oct. 29, 1947.

⁴¹ *New York Times*, Aug. 29, 1947, p. 6.

⁴² A mixed Franco-Italian Commission signed a report on Dec. 22, 194 ing a customs union to their governments (*New York Times*, Dec. 23, 19:

⁴³ Art. 5 of the Convention for European Economic Coöperation stat will continue the study of customs unions."

⁴⁴ Text in *New York Times*, April 16, 1948, p. 8; also in *Internatic tion*, Vol. II, No. 2 (June 1948), pp. 420-426.

⁴⁵ Its President is elected annually. Present President is Prime Mini Belgium.

⁴⁶ Chairman elected annually. Present Chairman is Sir Edmund Great Britain.

⁴⁷ Now Robert Marjolin of France.

goods and services (Art. 4); strengthen their economic links by all methods (Art. 5); continue the study of customs unions (Art. 5); coöperate with other like-minded countries in reducing tariffs and other barriers to the expansion of trade (Art. 6); achieve or maintain the stability of their currencies (Art. 7); make the fullest and most effective use of their available manpower and endeavor to provide full employment (Art. 8).

The functions of the organization, in order to carry out its aims (Art. 11), are: to prepare and implement the measures necessary to achieve the aim; to facilitate and to review the implementation of this convention; to provide for systems of observation and review adequate to ensure the efficient use both of external aid and of indigenous resources; to provide the United States Government with such assistance and information as may be agreed in relation to the execution of the ERP (Art. 12). The organization shall have power to take decision for the implementation by members, to enter agreements with and make recommendations to its members, non-member countries, the United States Government and international organizations (Art. 13).

The organization is limited to economic coöperation, and even in this field it is no more than a very loose confederation of sovereign, equal states and is based primarily on voluntary coöperation. A member can, because of non-fulfillment of its obligations, be excluded by the unanimous agreement of the other members (Art. 26), but each member has the right of withdrawal upon twelve months' notice (Art. 27). The unanimity rule prevails (Art. 14). There must be positive agreement—not mere abstention—of all the members, not only of the members represented. Article 14 further stipulates that an abstention of a member “declaring itself not to be interested in the subject under discussion” shall not invalidate decisions. This provision is highly ambiguous. If taken literally, it would provide a legal means for each member to free itself from an obligation undertaken by a mere declaration of non-interest. It is to be hoped that this clause will be interpreted restrictively; a declaration of non-interest to be legal only if, *e.g.*, a land-locked state makes a declaration of non-interest when fishing in territorial waters is under discussion.

The convention certainly does not create an economic super-government, but it should be noted that the parties expressly recognize in the preamble “that their economic systems are interrelated and that the prosperity of each of them depends upon the prosperity of all.” It must be emphasized further that the ultimate aim is “the achievement of a sound European economy through the economic coöperation of its members”; sound means, as the preamble states, “without extraordinary outside assistance.” The organization is set up as a permanent one, not merely to ensure the success of the ERP. The success of the organization will depend, first, on the success of the ERP, on American aid, on the efficiency

of its members and their willingness to overcome the many obstacles—economic, as well as political—to their economic coöperation, and on the effective working of the organization itself. The success will, further, depend on the degree of Soviet opposition and of internal, Communist sabotage, on possibilities of trade with Eastern Europe, and on the maintenance of peace. It is also clear that there can be no economic reconstruction of Europe without an economic reconstruction of Germany.

The organization is hardly a step toward Pan Europe. It is restricted to economic matters, restricted to sixteen European countries, some of them Allies, some neutral, some ex-enemies, some not members of the United Nations. Greece and Turkey are far away; Spain is left out. True, under Article 26 "any non-signatory European country may accede to the Convention"; but such accession depends not only on the willingness of the acceding state, but also—and decisively—on the assent of the Council under the unanimity rule.

III. *The Western European Union*, brought about by the Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defense, signed at Brussels on March 17, 1948,⁴⁸ is very different from the Paris organization. It is restricted to five states,⁴⁹ but much wider in scope. While including non-political coöperation (Arts. I-III), the most important element of the treaty is collective self-defense. The treaty shall come into force on the date of the deposit of the last instrument of ratification and shall remain in force for fifty years (Art. X). Contrary to the Paris convention, there is no right of denunciation or withdrawal prior to the expiration of this period of fifty years (Art. X).

The Brussels treaty is technically not an alliance, but a treaty of collective self-defense, based upon Article 51 of the United Nations Charter, comparable in this respect with the Rio de Janeiro treaty of 1947.⁵⁰ The parties pledge themselves to settle disputes only by peaceful means (Art. VIII). But, contrary to the Rio treaty, they will settle all disputes falling within the scope of Article 36, paragraph 2 of the Statute of the International Court of Justice by referring them to the Court, and will submit all other disputes to conciliation (Art. VIII).

The parties agree "to afford assistance to each other in accordance with the United Nations Charter and in resisting any policy of aggression" (pre-

⁴⁸ United Kingdom, Misc. No 2 (1948), Cmd. 7367; *New York Times*, March 18, 1948, p. 13; Department of State *Bulletin*, Vol. XVIII, No. 462 (May 9, 1948, pp. 600-602; *American Bar Association Journal*, May, 1948, pp. 406-408; *International Organization*, Vol. II, No. 2 (June, 1948), pp. 427-429. Text in French and German translation in *Friedens-Warte*, Vol. XLVIII/3 (1948), pp. 172-178.

⁴⁹ Great Britain, France, Belgium, Luxembourg, The Netherlands—all Allies, all Western European states, all democracies, all United Nations members, all Marshall Plan countries.

⁵⁰ See this writer's editorial comment in this JOURNAL, Vol. 42 (1948), pp. 111-120.

amble). Article IV corresponds to the Rio treaty, which also deals between "armed attack" and other aggressions. Contrary to the the Brussels treaty does not build up collective self-defense in In the case of any threat to peace, in whatever area this threat is the Consultative Council must, at the request of any member, immediately for consultation as to the attitude to be adopted and be taken (Art. VII). The treaty creates only one principal Consultative Council, "which shall be so organized as to be able to perform its functions continuously" (Art. VII). Nothing is said as to the binding quality of resolutions taken by the Executive Council.

In the case of "an armed attack in Europe" against a member, the other members will afford the party so attacked all military aid and assistance in their power (Art. IV). But, contrary to the Rio treaty, no meeting of the Consultative Council is provided for. On the other hand, the obligation is here much wider, as far as "collective self-defense" is concerned, than under the Rio treaty. The Brussels treaty speaks of "any aggression," but obviously does not mean, contrary to the Rio treaty, an aggression by a member on a member.

Is the Brussels treaty a step toward Pan Europe? Hardly. The treaty is open to "any other State" (Art. IX).⁵¹ But such a State must be invited and the invitation needs the unanimous agreement of the original members. For the moment, it is not planned to invite other Marshall Plan countries. Some of them, like Ireland, Portugal and the Scandinavian Kingdoms, could hardly be expected to accept the invitation. Italy, if invited, certainly would raise the question of the revision of the Peace Treaty of 1947; a disarmed Italy would be a military burden, not a strengthening.

Just as the Paris organization depends on American economic aid, the Brussels Union depends on American military aid. This is true in Europe and the United States.⁵² The Consultative Council of the Western Union at its first meeting in London, on April 24, 1948, created a Permanent Military Committee to draw up a basic program for collective defense. Under the Vandenberg Resolution of June 1948, which committed the United States to the principle of military alliances formed among the world's free nations, negotiations recently started at Washington between this country and the members of the Western European Union.

⁵¹ Whereas the Rio treaty is open to accession only by the "American States," the Paris convention only by "an European State."

⁵² See the President's message to Congress of March 17, 1948, the very signature of the Brussels treaty: "I am confident that the United States will by appropriate means, extend to the free nations the support which the situation demands. I am sure that the determination of the free countries of Europe to protect themselves will be matched by an equal determination on our part to help them to do so."

⁵³ *New York Times*, April 25, 1948, p. 13.

⁵⁴ *Ibid.*, June 12, 1948, pp. 1, 3.

"Is 'union' the right name for the constellation of power we are forecasting? Would not 'partition' of Europe be a more accurate word?" asks Toynbee.⁵⁵ The answer is probably yes. As long as the East-West split lasts, there is no hope for Pan Europe. What can be expected, if a third World War can be avoided, is an alliance of the non-Soviet world on the basis of Article 51 of the United Nations Charter. Such an "Atlantic Community" would confirm the partition of Europe, symbolized by the partition of Germany. But it can constitute a strong union for defense, a union which would solve Great Britain's dilemma of having to choose between Europe and the British Commonwealth of Nations and the dilemma of the United States of having to choose between Western Europe and Pan America.

JOSEF L. KUNZ

⁵⁵ Toynbee, *op. cit.*, p. 124.

CURRENT NOTES

THE BRUSSELS CONFERENCE OF THE INSTITUTE OF INTERNATIONAL LAW

The Institute of International Law has celebrated its 75th Anniversary, holding its 1948 session in Brussels, in the country in which it was founded in 1873. Its discussions took place in the commodious and dignified halls of the Palais des Academies from July 27th to August 3rd. The Members and Associates of the Institute attended in a body at a special session in the actual place of its birth in the ancient Town Hall of Ghent. Commemorative addresses were made in French and Flemish by Henri Rolin, President of the Belgian Senate, and by M. Claeys, the Burgomaster of Ghent. A bronze tablet has been installed in the Great Hall of the building on which the names of the principal founders of the Institute are recorded, including our own David Dudley Field.

The Institute devoted several days of the session to a consideration of a series of resolutions regulating the Conflicts of Jurisdiction in respect to Divorce and Separation, upon which agreement was finally reached. The Reporter was Professor Gutteridge of Cambridge, assisted by Professor Sauser-Hall of Geneva. The provisions of the draft are discussed in an editorial comment elsewhere in this issue of the JOURNAL.

The second subject discussed by the Institute was that of Asylum in Public International Law (exclusive of Neutral Asylum). The Reporter for this subject was Professor Perassi of Rome. Wide divergence of opinion was manifested concerning the articles treating of asylum accorded in buildings of diplomatic missions and upon battleships and other war constructions. It was found impossible to reconcile differences and accordingly it was determined to postpone further consideration of the subject to the next session of the Institute. The writer, as the only American in attendance, refrained from taking part in these discussions as the United States does not recognize or subscribe to the doctrine of asylum as part of international law. In this he followed the precedent set by the American Delegation to the Conference of American States at Montevideo in 1933.¹

Professor Georges Scelle (Paris) presented a masterly report on the Revision of General Conventions. The proposals envisaged by the report had in mind not merely revisions provided for in advance, but also revisions made desirable by changes in conditions since the convention was ratified. In other words, the report gave consideration to rules of revision without unanimity. It is curious that at the very moment of the presen-

¹ See Declaration of United States Delegation, appended to Convention on Political Asylum concluded at Montevideo, 1933, this JOURNAL, Supp., Vol. 28 (1934), p. 71.

tation of the report, the Soviet Union was making claims for revision of the convention regulating navigation on the Danube River. This served to accentuate the delicacy of the subject in the minds of some of the members. However, no action was sought or taken upon the report.

Professor Donnedieu de Vabres (Paris) presented a report on the Organization of an International Penal Jurisdiction. His principal thesis was that in order to render permanent the advances made by the London Statute and the judgment of the International Military Tribunal of Nuremberg, it was necessary to create an international penal jurisdiction before attempting to codify the principles applicable to the punishment of international crimes. Furthermore, he contended that it was necessary to separate jurisdiction for enforcing the law applicable to reprehensible acts of governments from jurisdiction having power to punish individuals guilty of international crimes acting in their own behalf or under orders of their governments.

The Institute elected 13 new Members and 18 new Associate Members. The following Americans were elected: As Honorary Member, George Grafton Wilson; as Members, Manley O. Hudson, Charles Cheney Hyde and Arthur K. Kuhn; as Associate Members, Edwin D. Dickinson, Charles G. Fenwick, Green H. Hackworth and Philip C. Jessup.

The next session of the Institute is to be held in England in 1950. The place and precise date are still to be determined. The new President is Sir Arnold McNair, one of the judges of the International Court of Justice.

ARTHUR K. KUHN

THIRD SESSION OF UNITED NATIONS COMMISSION ON HUMAN RIGHTS

The International Declaration of Human Rights was redrafted at the Third Session of the United Nations Commission on Human Rights held at Lake Success from May 24, 1948 to June 18, 1948.¹ It was then forwarded for review by the Economic and Social Council at its Seventh Session in Geneva. The Economic and Social Council in turn at the end of its session in August, 1948, transmitted the Declaration to the General Assembly for its consideration in Paris in September, 1948. Since the Declaration will not be a legally binding document, it will not be submitted to the states for ratification following its approval by the General Assembly.

The International Covenant on Human Rights, which was also on the agenda of the Third Session of the Commission on Human Rights, was not discussed, because practically the entire time of the Commission was found to be necessary for the completion of the Declaration of Human Rights. There was only a brief discussion of implementation on the last day of the session.

¹U.N. Doc. E/800, June 28, 1948, Report of the Third Session of the Commission on Human Rights.

The Geneva draft² of the Declaration was drastically rewritten at the Third Session of the Commission to state each of the rights in clear and concise language. Limitations on rights in individual articles were replaced by a broadened over-all limitation article (Article 27) which was made applicable to all the rights enumerated in the Declaration. In the Geneva draft, several of the articles undertook to define the manner in which the rights involved would be carried out. For example, Article 23 provided: "The State is bound to take all necessary steps to prevent unemployment." Such references to the state were omitted in the redrafting of the Declaration at the Third Session of the Commission.

The International Declaration of Human Rights³ was approved at the Third Session of the Commission by a vote of 12 to 0, with only the U.S.S.R., the Ukraine, Byelorussia and Yugoslavia abstaining.

The Preamble to the Declaration was drafted at the Third Session of the Commission in considerable detail to include a number of concepts proposed by various delegations, which were preambulatory in nature and which accordingly were more appropriately stated in a preamble than in the body of the Declaration. The Preamble proposes the Declaration "as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

The articles of the Declaration are stated in the present tense and as rights to which individuals are entitled. For example, Article 3 provides: "Everyone has the right to life, liberty and security of person." Articles 3 to 19 concern civil and political rights and Articles 20 to 25, social and economic rights. The subject matter of the articles is as follows:

Article 1, All human beings are born free and equal in dignity and rights; Article 2, Non-discrimination; Article 3, Right to life, liberty, and security of person; Article 4, Freedom from slavery, servitude, torture, inhuman treatment or punishment; Article 5, Recognition as a person before the law; Article 6, Equal protection of the law; Article 7, Freedom from arbitrary arrest or detention; Article 8, Right to a fair hearing by an independent and impartial tribunal; Article 9 (1), Presumption of innocence and right to public trial, with all guarantees necessary for defense, in criminal cases; Article 9 (2), Freedom from *ex post facto* laws; Article 10, Freedom from interference with privacy; Article 11 (1), Freedom of move-

² This draft had been prepared at the previous session of the Commission in Geneva, Annex A of U.N. Doc. E/600, Report of the Commission on Human Rights, Second Session.

³ Annex A of U.N. Doc. E/800.

ment and residence within a state; Article 11 (2), Right to leave any country; Article 12, Right of asylum from persecution; Article 13, Right not to be deprived arbitrarily of nationality and right to change nationality; Article 14, Right to marry and to protection of the family; Article 15, Right to own property; Article 16, Freedom of religion; Article 17, Freedom of opinion and expression; Article 18, Freedom of assembly and association; Article 19, Right to participate in government; Article 20, Right to social security; Article 21, Right to work and form and join trade unions; Article 22, Right to health and security; Article 23, Right to education; Article 24, Right to rest and leisure; Article 25, Right to participate in cultural life; Article 26, Right to good social and international order.

Article 27, which is the general over-all limitation clause applicable to each of the rights enumerated in the Declaration, provides:

1. Everyone has duties to the community which enables him freely to develop his personality.

2. In the exercise of his rights, everyone shall be subject only to such limitations as are necessary to secure due recognition and respect for the rights of others and the requirements of morality, public order and general welfare in a democratic society.

In contrast to the Declaration, the Covenant on Human Rights is being drafted by the Commission on Human Rights to be a legally binding document for those states which ratify it. The rights thus far set forth in the Covenant are in general the rights enumerated in Articles 2, 3, 4, 7, 8, 9, 11, 16, 17 and 18 of the Declaration.

The Drafting Committee of the Commission in its Second Session at Lake Success,⁴ immediately prior to the meeting of the Third Session of the Commission, prepared a rough redraft of the Covenant for the consideration of the Commission. Since the Commission did not have the time available to consider the Covenant at its Third Session, it will convene again on April 11, 1949, at Lake Success to complete the drafting of the Covenant.

The principal issue developed and not resolved in the meetings of the Drafting Committee concerning the Covenant was whether the limitations on each right set forth in the Covenant should be given in detail or in a general over-all article applicable to all the rights in the Covenant. For example, it was proposed that the Covenant provide in Article 11:

1. No one shall be denied freedom of movement or residence within the borders of a Contracting State.
2. Anyone shall be free to leave any country including his own.

It was found that if express limitations on this right are enumerated in the Covenant, at least 14 limitations would have to be listed. The Netherlands pointed out in its comments that freedom to leave the country would

⁴U.N. Doc. E/CN.4/95, May 21, 1948, Report of the Drafting Committee to the Commission on Human Rights, Second Session.

be subject to outstanding obligations with regard to national service, tax liabilities or voluntarily contracted obligations binding the individual to the government. France pointed out that consideration would have to be given to possible lawful detentions and to restrictions imposed because criminal proceedings are pending or to prevent the imminent commission of a crime or offense. The United States, the United Kingdom and the Union of South Africa submitted other restrictions which would also have to be enumerated in the Covenant if it were agreed that detailed limitations should be given.

The problem of enumeration became particularly difficult when the Committee considered freedom of expression, because 33 possible restrictions were submitted for the consideration of the Committee. In the case of an article on arrest and detention, 34 different detailed restrictions were enumerated. Concern was expressed by some delegations attending the Drafting Committee meetings that the detailed enumeration of all the various restrictions possibly applicable to each of the rights set forth in the Covenant might lead to the absurd result that the Covenant would be referred to as one of restrictions rather than of rights. As a substitute for the express enumeration of detailed restrictions applicable to each right in the Covenant, the United States proposed to the Drafting Committee that it would be sufficient to include a general over-all article along the following lines to serve as a limitation on all the rights enumerated: "The obligations imposed . . . shall not affect the right of States parties to the Covenant to take action reasonably necessary for the preservation of peace, order or security or the promotion of the general welfare. Such action may be taken only by or pursuant to law. . . ." It will be observed that Article 27 of the Declaration is an over-all limitation clause applicable to all the rights set forth in the Declaration. There is no detailed enumeration of restrictions in any of the articles of the Declaration as is proposed for the Covenant.

Since there was not adequate time for the resolution of this question of limitations with respect to the articles of the Covenant, the Drafting Committee set forth the two alternative proposals in a draft text for the consideration of the Commission on Human Rights at its next session to begin April 11, 1949.

At the final meeting of the Third Session of the Commission on June 18, implementation measures for the Covenant were considered briefly.⁵ China and the United States joined in proposing that procedures for dealing with violations of the Covenant should be developed gradually in the light of experience.⁶ As a first step, they proposed that provision be simply made in the Covenant for the appointment by covenanting

⁵ See this JOURNAL, Vol. 42 (1948), p. 389, for discussion of measures of implementation considered at Second Session of Commission on Human Rights.

⁶ U.N. Doc. E/CN.4/145, June 16, 1948.

states of a committee to which a matter not settled by negotiation or otherwise within a reasonable time should be referred by a covenanting state concerned with the dispute. The committee would consider the complaint referred to it and, in view of all the circumstances involved, make a recommendation addressed to the states concerned, looking toward an amicable solution of the dispute.

It is expressly stated in the China-United States proposal that in their view it is not necessary to create an International Court of Human Rights or a special chamber of the International Court of Justice, at least until some experience has been gained of the operation of the Covenant and of the implementation machinery initially proposed. It is also pointed out that within a reasonable time after the coming into force of the Covenant, covenanting states should consider whether further measures of implementation are desirable, including measures concerning petitions from individuals, organizations and groups. The China-United States proposal does not contemplate the consideration of petitions from individuals, organizations or groups initially; the implementation machinery proposed is limited to states parties to the Covenant.

Reference is made in the China-United States proposal to the availability of the International Court of Justice in accordance with the provisions of the Charter of the United Nations and the Statute of the Court. Provision is made for any state charged with a violation of the Covenant, or for the committee proposed to be established, to request the Economic and Social Council to secure an Advisory Opinion from the International Court of Justice, as provided in the Charter of the United Nations and the Statute of the Court, on any legal question arising.

The delegations of Chile, Egypt, Panama, the United Kingdom and Uruguay expressed their general support of the principles of the China-United States proposal. India supported the China-United States proposal in part only.

France and Australia supported a more detailed proposal of France.⁷ In addition, Australia submitted a draft Statute for an International Court of Human Rights.⁸

The Soviet Union,⁹ Byelorussia, the Ukraine and Yugoslavia opposed the proposed measures of implementation, while the other three members of the Committee at its third session urged the postponement of this question.

JAMES SIMSARIAN *

⁷ U.N. Doc. E/CN.4/82/Add.10, May 17, 1948.

⁸ U.N. Doc. E/CN.4/AC.1/27, May 10, 1948.

⁹ U.N. Doc. E/CN.4/154, June 24, 1948.

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INSTITUTE ON THE TEACHING OF INTERNATIONAL AND COMPARATIVE LAW

A successful Institute for Law School Teachers of International Law and Comparative Law,¹ conducted by the Association of American Law Schools with the coöperation of the Carnegie Corporation, was held at the Association of the Bar of the City of New York from August 23 to September 4, 1948, with a considerable number of law schools represented by members of their faculties. On the international law side, attention was centered upon the problems of an introductory course given to a substantial number of law students within the time limitations of not more than three hours a week for a single semester. Under the general direction of Professors Edwin D. Dickinson and Philip C. Jessup, assisted by the writer, discussions dealt with the objectives and scope of such a course, the materials deemed most worth while to cover therein, the teaching methods to be employed, and various problems likely to be encountered. Many emphasized the differences between such a course designed for a large number of law students as a part of their general professional education and the more traditional courses intended for those few law students who may have a special interest in international law and related subjects. Much interest was expressed in the extent to which material dealing with international organization (in particular the United Nations) might well be included in such a brief introductory course in law schools, and in the opportunities for making the student aware of the relationship of international law to the political, geographic, economic and social factors in international relations.

The institute also devoted considerable time to discussions of some of the current problems in the international legal field, and a number of well-known speakers participated in this phase of the program. Justice Robert H. Jackson of the United States Supreme Court spoke on some of the problems encountered in the earlier stages of the Nürnberg war crimes trials, especially in framing the agreement and charter of the tribunal and in preparing the indictment. Judge Green H. Hackworth of the International Court of Justice took part in informal discussions of the part which international law plays in relations between states. Professor James L. Brierly of Oxford discussed aspects of international law teaching in England, as well as the problems of codification and development of international law under the United Nations. Fred K. Nielsen gave an address on "International Reclamations." Professor Clyde Eagleton spoke on "International Law and Lawyers"; Professor Josef Kunz discussed the relationship of the theory of international law to law school teaching; Professor John Hazard presented information regarding the Soviet attitude toward international law as shown in the Soviet sources; and Professor

¹ See this JOURNAL, Vol. 42 (1948), p. 432.

Manley Hudson discussed attempts to codify the principal rights and duties of states.

During the latter part of the sessions a comparable program was given over to problems of comparative law and of law school courses in that subject.

There appeared to be a general consensus that the exchange of views during the sessions of the institute would prove of great value in improving the work done in teaching international law courses in American law schools. The hope was expressed that in connection with the annual December meetings of the Association of American Law Schools, and through correspondence conducted by the Association's Committee on International and Comparative Law, a continuing effort may be made by law school teachers to exchange ideas and plans designed to improve law school instruction in international law and comparative law.

WM. W. BISHOP, JR.

UNIVERSITY OF MICHIGAN LAW SCHOOL FORUM ON INTERNATIONAL LAW

The increasing interest in international law in various parts of the country is exemplified by the program on international law conducted last July by the University of Michigan Law School Summer Session. As part of this program, conceived by Dean E. Blythe Stason, Professor Emeritus James L. Brierly of Oxford University and Professor Lawrence Preuss of the University of Michigan taught a seminar on the sovereign state in international law for about 35 students of the Law School. A forum on Current Problems of International Law was held on two week-ends for practicing lawyers, students and citizens interested in international affairs. During the first week-end, devoted primarily to "International Law and Private Rights," lectures were delivered by Professor Preuss on "Conflict between International and Domestic Law"; by Dr. Yuen-li Liang of the United Nations Secretariat on "The Legal Status of the United Nations in the United States"; by Professor Brierly on "The British Approach to International Law"; by Charles S. Rhyne of the District of Columbia Bar on "International Law and Air Transportation"; and by the writer on "The Legal Status in the United States of Foreign Government-Owned Corporations." The second week-end, centered upon "International Law and Public Rights," included lectures by Charles Fahy, formerly legal adviser of the United States Military Government in Germany and thereafter Legal Adviser of the Department of State, on "Legal Problems of German Occupation"; by Professor Max Rheinstein of the University of Chicago Law School on "The Present International Status of Germany"; by George Burke of the Michigan Bar and formerly a judge of one of the war crimes tribunals at Nürnberg on "International Crimes and their

Prosecution"; by Professor Brierly on "Codification of International Law"; by Professor Hersch Lauterpacht of Cambridge on "International Law and Human Rights"; and by the writer on "Peace Treaties of World War II." Each lecture was followed by questions and discussion. Several hundred persons attended, and it is believed that the forum resulted in a more widespread understanding by members of the university community and the legal profession of some of the present problems of international law.

WM. W. BISHOP, JR.

NOTES ON LEGAL QUESTIONS CONCERNING THE UNITED NATIONS

BY YUEN-LI LIANG *

SOME ASPECTS OF THE WORK OF THE INTERIM COMMITTEE OF THE GENERAL ASSEMBLY †

The Interim Committee was established as a subsidiary organ of the General Assembly under Article 22 of the Charter by Resolution 111 (II) of November 13, 1947.¹ In order to carry out the tasks assigned to it by the General Assembly, the Interim Committee set up four sub-committees as follows: (1) Sub-Committee One on rules of procedure;² (2) Sub-Committee Two on the promotion of international coöperation in the political field;³ (3) Sub-Committee Three on the problem of voting in the Security Council;⁴ (4) Sub-Committee Four on the advisability of establishing a permanent committee of the General Assembly.⁵ The Interim Committee also dealt with the problem of the Independence of Korea but did not refer this problem to a sub-committee.⁶ The present note will deal only with the problems which were considered by the Interim Committee through its Sub-Committees Two and Three.

The Problem of Voting in the Security Council

The Interim Committee was specifically requested by General Assembly Resolution 117 (II) to consider the problem of voting in the Security Council. Perhaps no other question has caused so much disagreement and given rise to so much controversy both in the drafting and in the ap-

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† Prepared at the editor's request by Mr. H. C. Kiang, Technical Counsellor, Chinese Delegation to the Interim Committee.

¹ See this JOURNAL, Vol. 42 (1948), pp. 435-439 for note on the establishment of the Interim Committee and its terms of reference.

² See U.N. Doc. A/AC.18/5, Jan. 8, 1948, for Report of Sub-Committee One.

³ See U.N. Doc. A/AC.18/73, July 19, 1948, and A/AC.18/73/Add.1, July 21, 1948, for the Report of Sub-Committee Two. See U.N. Doc. A/605, Aug. 13, 1948, for Report of Interim Committee on the Study of Methods for the Promotion of International Coöperation in the Political Field.

⁴ See U.N. Doc. A/578, July 15, 1948, for the Report of the Interim Committee on the Problem of Voting in the Security Council.

⁵ See U.N. Doc. A/AC.18/84, Aug. 2, 1948, for the Report of Sub-Committee Four on the Advisability of Establishing a Permanent Committee of the General Assembly.

⁶ See U.N. Doc. A/583, July 22, 1948, for Report of the Interim Committee on the Problem of the Independence of Korea.

plication of the Charter of the United Nations. During the second part of its first session the General Assembly adopted a resolution presented by Australia which requested the permanent members of the Security Council to make every effort to ensure that the use of the special voting privilege of its permanent members did not impede the Security Council in reaching decisions promptly, and recommended to the Security Council the early adoption of practices and procedures to assist in reducing the difficulties in the application of Article 27.⁷ The second session of the General Assembly was also confronted with several proposals on the question of voting in the Security Council. One of these was a proposal by Argentina for the convoking of a general conference for the purpose of amending the Charter with a view to abolishing the veto power of the permanent members.⁸ Another proposal, put forward by the Chinese Delegation, aimed at "an improvement in the practice of the Security Council by the method of procedural revision in full harmony with the spirit and letter of the Charter."⁹ The United States Delegation proposed that this question be referred to the Interim Committee.

It may be noted that, in submitting its draft resolution to the First Committee, the representative of the United States indicated the attitude of his government by stating that (1) the United States did not consider the statement made by the four sponsoring Powers and France at San Francisco on June 7, 1945, as a treaty binding it for all time, but at most a statement of the general attitude of these Powers; and (2) the United States was not opposed to the problem of voting being studied on a wider basis in the General Assembly. He added that "the present voting procedure could undoubtedly be made flexible in many respects without modifying the voting rules in Article 27 of the Charter, and, in any event, many aspects of this procedure should be maintained."¹⁰ The United States' proposal was strongly attacked by the Soviet representative, who opposed any attempt to modify the principle of the unanimity of the Great Powers.¹¹

After considerable discussion the resolution proposed by the United States Delegation was adopted. This resolution, in referring the question of voting procedure to the Interim Committee, requested that committee to consider the problem, "taking into account all proposals which have been or may be submitted by members of the United Nations to the second session of the General Assembly or to the Interim Committee." The permanent members of the Security Council were also requested to consult with one another on the problem of voting in the Security Council in order

⁷ General Assembly Resolution 40(I), Dec. 13, 1946.

⁸ U.N. Doc. A/351, Aug. 22, 1947.

⁹ U.N. Doc. A/C.1/202/Rev.1, Oct. 10, 1947.

¹⁰ U.N. Doc. A/C.1/SR.118, Nov. 18, 1947, p. 3.

¹¹ U.N. Doc. A/P.V.122, Nov. 21, 1947, p. 31.

to secure agreement among them on measures to insure the prompt and effective exercise by the Security Council of its functions.¹²

Following a general discussion by the Interim Committee, the question was referred to Sub-Committee Three,¹³ which was established at the twelfth meeting of the Interim Committee, to "examine and analyze all proposals already submitted to the second session of the General Assembly, or which may be submitted subsequently to the Committee or to the Sub-Committee, and to make a preliminary report to the Interim Committee not later than 15 May 1948." The sub-committee in turn appointed a working group which was instructed to study the various proposals and to prepare a draft recommendation, such as might eventually be submitted to the General Assembly.

The proposals studied by the working group varied widely in nature. Argentina proposed the convocation of a general conference of the Members of the United Nations under Article 109 of the Charter to abolish the veto. New Zealand expressed its support of any proposals designed to eliminate or modify the present provisions of the Charter requiring the unanimity of the permanent members of the Security Council, and it proposed that Article 27 of the Charter be amended so that the words "concurring votes of the permanent members" be replaced by the words "concurring votes of four of the five permanent members." China, the United Kingdom, the United States and others took a more moderate stand. Their proposals were mainly intended to seek improvement in the practice of the Security Council by the method of procedural revision.

The sub-committee took as a basis of its work a list prepared by the Secretariat of ninety-eight items¹⁴ of possible decisions "adopted or [which] might be adopted by the Security Council in application of the Charter or the Statute of the International Court of Justice."¹⁵ The sub-committee, in the examination of these possible decisions, came to the conclusion that thirty-six items were procedural within the meaning of Article 27, paragraph 2. Those items which were determined to be procedural fell generally into five categories: (1) decisions of the Security Council adopted in application of provisions which appear in the Charter under the heading "procedure";¹⁶ (2) decisions which relate to the internal procedure of the United Nations, such as those concerning the relationship between the Security Council and other organs of the United Nations,

¹² General Assembly Resolution 117(II), Nov. 21, 1947.

¹³ U.N. Doc. A/578, July 15, 1948, p. 1. The Sub-Committee was composed of representatives of Argentina, Australia, Belgium, Brazil, Canada, Chile, China, Cuba, France, Guatemala, India, Norway, Siam, Syria, Turkey, the United Kingdom and the United States of America.

¹⁴ U.N. Doc. A/AC.18/SC.3/3, March 26, 1948.

¹⁵ U.N. Doc. A/AC.18/62, June 3, 1948, and A/AC.18/66, June 24, 1948.

¹⁶ Articles 28-32 of the United Nations Charter.

or by which the Security Council seeks the assistance of other organs of the United Nations; (3) decisions of the Security Council which relate to its internal functioning and the conduct of its business; (4) certain decisions of the Security Council which bear a close analogy to the decisions included in the above-mentioned criteria; and (5) certain decisions of the Security Council which are instrumental in arriving at or in following up a procedural decision.

The sub-committee also agreed that twenty-four possible decisions of the Security Council should be adopted by the vote of seven members of the Security Council, whether these decisions are considered procedural or non-procedural. In reaching a conclusion on these items, it was considered whether the decision, if taken by a vote of any seven members of the Security Council, would improve the functioning of that body and permit it promptly and effectively to fulfill its responsibilities under the Charter.

There were also thirty-six items for which no definite recommendation could be made, since the voting procedure would depend upon the specific steps to be taken by the Security Council. The sub-committee, having reached these conclusions concerning the items of possible decisions, submitted reports to the Interim Committee on June 3 and 24, 1948.¹⁷ The Interim Committee examined these reports in the course of five meetings and embodied them, with certain modifications and revisions, in its own report to the General Assembly.¹⁸ It is proposed to examine in more detail a few of those items which caused some controversy in Sub-Committee Three and in the Interim Committee.

In regard to possible decisions under Chapter I of the Charter, no recommendation was made concerning the voting procedure in a decision whether a matter is "essentially within the domestic jurisdiction of any state." In the opinion of the United States representative, the question does not constitute a separate decision by the Security Council and would arise only in connection with some other decision such as the adoption of the agenda or the consideration of proposals for action under Chapters VI or VII of the Charter. The representatives of Norway and Ecuador, supported by Belgium and Turkey, thought that wherever there is disagreement on the question of domestic jurisdiction, the Security Council should not vote but should request an advisory opinion of the International Court of Justice. In reply to the doubt expressed by the Chinese representative that in certain circumstances it might be impossible to delay a decision while awaiting the opinion of the court, the representative of Norway suggested that in urgent cases recourse should be had to summary procedure as provided in Article 29 of the Statute of the Court. However, doubts were expressed as to the applicability of Article 29 of

¹⁷ U.N. Doc. A/AC.18/62, June 3, 1948, and A/AC.18/66, June 24, 1948.

¹⁸ U.N. Doc. A/578, July 15, 1948.

the Statute of the Court to the procedure of rendering advisory opinions.¹⁹ Throughout the discussion in the sub-committee and later in the full Interim Committee, the representatives of Turkey and Argentina insisted that the principle of unanimity among the permanent members should not apply to this item, as the question whether a matter is within the domestic jurisdiction of a state is a problem of international law.

No decision of the Security Council upon any single subject has been subject to more extensive use of the veto than in the matter of admission of new members. Most of the members of the Interim Committee supported its recommendation that the decision on the admission of a state to membership in the United Nations should be adopted by the vote of any seven members of the Security Council, no matter whether the decision itself is considered procedural or non-procedural. In the opinion of the representatives of Argentina, Greece and Iraq, the question of the admission of new members is within the specific powers of the General Assembly, and the recommendation of the Security Council is not therefore covered by a privileged voting procedure.

Another item on which no recommendation was made concerned a request to the General Assembly by the Security Council under Article 12 of the Charter to make a recommendation on a dispute or situation in respect to which the Security Council is exercising the functions assigned to it in the Charter. In the opinion of the members of the sub-committee this decision is procedural. The representative of the United Kingdom recalled that the Security Council had been prevented from reaching a conclusion that this decision was procedural by the use of the "double veto" on the preliminary question under Part II, paragraph 2, of the Statement by the Four Sponsoring Powers.²⁰ The representative of the United Kingdom considered that the use of the "double veto" did not in any way change the law or the correct interpretation of the Charter. Therefore, the United Kingdom representative did not regard the instance as a precedent that the decision is substantive.

Considerable discussion also took place in the sub-committee concerning the decision whether a matter is or is not procedural within the meaning of Article 27, paragraph 2. The majority opinion of Sub-Committee

¹⁹ In connection with the proposal submitted by the Belgian Delegation to authorize the Interim Committee to request advisory opinions of the International Court of Justice (doc. A/AC.18/44), the Secretary General communicated to the Interim Committee the text of a telegram received from the President of the International Court of Justice, referring to the question of the summary procedure of the Court: "Procedure advisory opinion requested urgently may be made even shorter than that of cases brought before Chamber summary procedure. By Article 66 Statute President may dispense with either written or oral proceedings. An urgent opinion may remain before the Court for six to nine weeks according complexity of the issue. Guerrero" (A/AC.18/82, July 28, 1948).

²⁰ U.N. Doc. S/P.V.202, Sept. 15, 1947, pp. 126-171.

Three, which was approved by the Interim Committee, was that this decision should be adopted by the vote of any seven members of the Security Council. Again it was pointed out that the short history of the United Nations has shown that there were occasions on which an affirmative decision on the procedural nature of a question was not adopted through the adverse vote of one or more permanent members, despite the favorable vote by seven or more members.²¹ In the sub-committee the United States representative declared that the Statement of the Sponsoring Powers, commonly known as the San Francisco Statement, had been abused by the Soviet Union as regards the application of Part II of that document. The Soviet Union had prevented the Security Council from declaring certain items procedural which, under the Charter, were clearly procedural. According to the United States representative, the purpose of Part II of the Statement was to provide a method for determining how to settle the voting procedure applicable to additional categories of decisions not specifically designated as procedural or non-procedural, and that Part II of the Statement was meant to be read in the light of Part I, where a general definition was given. The United Kingdom representative was joined by that of France in considering that this decision was not procedural and, as contemplated in the San Francisco Statement, should be governed by the principle of unanimity of the permanent members. The United Kingdom representative, however, supported the suggestion of Belgium and Norway that in case of disagreement the Security Council should refer the issue whether a question is procedural within the meaning of Article 27, paragraph 2, to the International Court of Justice for an advisory opinion, rather than decide the question itself.

A second point in regard to Article 27 involved a decision whether a question is a situation or a dispute for the purpose of Article 27, paragraph 3, regarding the requirement of abstention. The sub-committee concluded that this decision should be adopted by the vote of any seven members of the Security Council, for the reason that no member of the Security Council should be in a position to thwart the mandate of the Charter which requires a member to abstain from voting in any dispute to which it is a party. In discussing the procedure which might be recommended for the application of this principle, the representative of Norway suggested that the Security Council, in case of disagreement, should refer the matter to the International Court of Justice for an advisory opinion, while the representative of the United Kingdom submitted a definition of a dispute for the purposes of Article 27, paragraph 3, which was amended and approved by the Interim Committee. This definition was not intended to apply to the word "dispute" as used in other provisions of the Charter.

²¹ See *Journal of the Security Council*, July 11, 1946, p. 841.

The formula containing the definition of a dispute, which was finally approved by the Interim Committee, is as follows:

- (1) In deciding for the purpose of Article 27, paragraph 3, whether a matter brought before the Security Council by a State or States is a dispute or a situation, the Security Council shall hold that a dispute arises:
 - (a) if the State or States bringing the matter before the Security Council, and the State or States whose conduct is impugned, agree that there is a dispute.
 - (b) whenever the State or States bringing the matter before the Security Council allege that the actions of another State or States in respect of the first State or States constitute a breach of an international obligation or are endangering or are likely to endanger the maintenance of international peace and security, or that such actions demonstrate preparation to commit a breach of international obligations or to endanger the maintenance of international peace and security, and the State or States which are the subject of these allegations contest, or do not admit, the facts alleged or inferences to be drawn from such allegations.
- (2) Further, if a State bringing before the Security Council a matter of the nature contemplated under (1) above alleges that another State is violating the rights of a third State, and the latter supports the contention of the first State, then the third State shall also be deemed a party to the dispute.
- (3) Nothing in this definition shall prevent the Security Council from deciding that a dispute exists in circumstances not covered by the above definition.

As to the requirement of abstention from voting by Security Council members pursuant to Article 27, paragraph 3, of the Charter, the United States suggested that all parties involved in matters arising before the Security Council, whether these matters technically be considered disputes or situations, must abstain from voting.²² In the opinion of the United States representative there were no arguments based either on principle or on the practical necessities of the case, which would justify the conclusion that the Charter was drafted with the intent to draw a distinction between disputes and situations when Article 27, paragraph 3, of the Charter was adopted. Therefore, the United States held the view that no such distinction was intended or should be accepted.

There was general agreement among the members of the sub-committee that in decisions under Chapter VI of the Charter dealing with the pacific settlement of international disputes there should be no insistence by the permanent members upon the principle of unanimity. The Chinese Delegation proposed that the General Assembly recommend to the five permanent members of the Security Council the amplification of the Sponsoring Governments' Statement by adding to it a declaration that the five per-

²² U.N. Doc. A/AC.18/SC.3/4, May 11, 1948.

manent members, one and all, waive the right of invoking the application of Article 27, paragraph 3, in all proceedings arising under Chapter VI of the Charter on pacific settlement of disputes.²³ The United States representative was of the opinion that as a matter of principle, regardless of whether the decisions under Chapter VI are procedural or substantive, no one state should have the power to prevent the Security Council from fulfilling its rôle of mediator in international controversies. In support of the attitude of the United States, Canada maintained that no state should be judge in its own cause, and the proviso in paragraph 3 of Article 27 would be rendered of no effect if a permanent member of the Security Council could veto a decision that a dispute exists or that it itself is a party to a dispute.²⁴

The United Kingdom representative, while being opposed to the abuse of the veto, did not agree with the representatives of those other governments in their position that Chapter VI should be singled out at the present time and that the abolition of the veto should be particularly related to that chapter. Fear was also expressed by the representative of Norway that any attempt to revise the Charter as far as Chapter VI was concerned would contribute to weaken the potentialities of the United Nations for pacific settlement.

No recommendation was made by the sub-committee on any of the important items of possible decisions under Chapter VII on action with respect to threats to the peace, breaches of the peace and acts of aggression. However, some members expressed the view that the decisions on certain items were procedural. For instance, in the case of the ascertainment of compliance with provisional measures under Article 40, the sub-committee was of the opinion that the decision should be procedural if it merely requested information on compliance with provisional measures. The decision should be non-procedural if it established a commission of investigation on the spot. This was in reference to an instance in which a resolution before the Security Council to establish a commission of investigation in order to ascertain on the spot the compliance with a "cease-hostilities" resolution was rejected through the adverse vote of a permanent member despite a favorable vote on the part of a majority of the members of the Security Council.²⁵ With regard to the determination of the existence of any threat to the peace, breach of the peace, or act of aggression, the representatives of Turkey and Argentina were of the opinion that the first part of Article 39 should not be subject to the unanimity rule since this part does not, by itself, involve coercive measures.

When the sub-committee came to Chapter XIV relating to the International Court of Justice, it was agreed that the recommendation of the

²³ U.N. Doc. A/AC.18/49, March 18, 1948, p. 3.

²⁴ U.N. Doc. A/AC.18/18, Part B, Jan. 14, 1948.

²⁵ U.N. Doc. S/P.V.195, Aug. 26, 1947, p. 56.

Security Council of the conditions on which a non-member state becomes a party to the Statute of the International Court of Justice (Article 93, paragraph 2) should be adopted by the vote of any seven members of the Security Council. The United States representative expressed the view that the decision is procedural. As to the item concerning a request to the International Court of Justice for an advisory opinion on a legal question (Article 96), the sub-committee concluded that this decision was procedural. Regarding this particular item, the Belgian representative submitted a proposal,²⁶ supported by the representative of the United Kingdom, to meet the contingency where a permanent member of the Security Council should invoke its right of veto to prevent a request for an advisory opinion from reaching the International Court, although the request was supported by a majority of seven votes. It was suggested that in such an event it would be open to the Council to instruct the Secretary General to transmit to the Court, together with the text of the contested request, the records of the Council's meetings at which the question was discussed. The decision to issue such instructions would be procedural in nature. When the International Court of Justice is in possession of the official records accompanied by the request for an advisory opinion it will be able to decide whether it is competent in the matter.

With reference to the implementation of the foregoing conclusions, three principal methods were proposed: (1) by interpretation of the Charter as proposed by the Chinese Delegation;²⁷ (2) by agreement among the five permanent members of the Security Council as suggested by China, the United Kingdom and the United States;²⁸ (3) by the convocation of a general conference to review the Charter as suggested by Argentina and New Zealand.²⁹

Pacific Settlement of Disputes

Under the terms of paragraph 2(c) of the General Assembly Resolution 111 (II) of November 13, 1947, the Interim Committee was authorized to consider and report with its conclusions on "methods to be adopted to give effect to that part of Article 11 (paragraph 1) which deals with the general principles of coöperation in the maintenance of international peace and security, and to that part of Article 13, paragraph 1a, which deals with the promotion of international coöperation in the political field." For this purpose the Interim Committee at its 11th meeting on March 2, 1948, established Sub-Committee Two.³⁰ The sub-committee had for its consideration

²⁶ U.N. Doc. A/AC.18/50, March 18, 1948.

²⁷ U.N. Doc. A/AC.18/13, Part A, Jan. 14, 1948.

²⁸ U.N. Doc. A/AC.18/17, Feb. 10, 1948, and Corr. 1, A/AC.18/41, March 10, 1948.

²⁹ U.N. Doc. A/AC.18/12, Jan. 13, 1948, and A/AC.18/38, March 9, 1948.

³⁰ Sub-Committee Two was composed of representatives of Australia, Belgium, Brazil, China, Colombia, Dominican Republic, Ecuador, France, Greece, Iran, Lebanon, Sweden, Venezuela, the United Kingdom and the United States.

proposals submitted by Lebanon,⁸¹ Belgium,⁸² China and the United States,⁸³ the United Kingdom,⁸⁴ Canada⁸⁵ and Ecuador.⁸⁶ After considerable discussion, the sub-committee agreed that "the entire project of giving effect to the pertinent parts of Articles 11 and 13 of the Charter was a task extending over many years,"⁸⁷ and therefore decided not to attempt to report to the Interim Committee on the entire range of the subject. Instead it chose to study methods for giving effect to the General Assembly's responsibility for pacific settlement of disputes.

The methods of pacific settlement of disputes as listed in Article 33 of the Charter include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means. The proposals which were submitted to Sub-Committee Two covered more or less these methods of pacific settlement.

The only reference which was relevant to negotiation was to be found in the United Kingdom proposal concerning conciliation, which envisaged the possibility that the President of the Security Council or of the General Assembly might play a rôle in "stimulating" direct negotiations between the parties to a dispute or situation. There was likewise no specific proposal concerning the method of enquiry, although in the discussion the members of the sub-committee had in mind the existing machinery as provided in the Hague Convention for Pacific Settlement of International Disputes and in numerous bilateral and multilateral treaties concluded by states in the past. The joint Chinese and United States proposal related to enquiry as well as to conciliation. Mediation was not made the subject of any specific proposal.

Five of the proposals before the sub-committee were on the subject of conciliation.⁸⁸ The Lebanese representative proposed the creation of a permanent committee of conciliation as a subsidiary organ of the General Assembly with delegated powers. The Security Council, the General Assembly, or any state so empowered under Article 35 of the Charter could bring a matter before the committee. The Committee of Conciliation would report to the Security Council or the General Assembly the terms of any agreement reached, or in the absence of agreement, its recommendations. The committee also would be authorized to study concrete problems of international coöperation and to submit proposals thereon to the General

⁸¹ U.N. Doc. A/AC.18/15, Jan. 28, 1948, and A/AC.18/30, Feb. 24, 1948.

⁸² U.N. Doc. A/AC.18/18, Feb. 11, 1948, and A/AC.18/54, March 30, 1948.

⁸³ U.N. Doc. A/AC.18/24, Feb. 16, 1948.

⁸⁴ U.N. Doc. A/AC.18/39, March 9, 1948, and A/AC.18/49, March 18, 1948.

⁸⁵ U.N. Doc. A/AC.18/17, Feb. 10, 1948.

⁸⁶ U.N. Doc. A/AC.18/63, June 16, 1948.

⁸⁷ U.N. Doc. A/AC.18/73, July 19, 1948, p. 6.

⁸⁸ These were the joint proposal by China and the United States, the Lebanese proposal, with the amendments of the Dominican Republic, the Belgian proposal and the United Kingdom proposal.

Assembly. The members of the committee would be elected from the representatives of states with regard both to personal competence and equitable geographical representation. The Lebanese proposal met with opposition from several representatives who viewed unfavorably the creation at this time of a new organ which in its relation to existing organs, might lead to confusion of machinery and responsibility and which might weaken rather than strengthen the effectiveness of the United Nations for the pacific settlement of disputes. The sub-committee agreed to defer further consideration of the Lebanese proposal until the United Nations organs have had more experience in the field.

The Belgian proposal to transfer to organs of the United Nations certain functions of organs of the League of Nations and the Permanent Court of International Justice under the General Act of 1928 received extended consideration by the sub-committee. However, the United Kingdom representative expressed doubt concerning the value of some of its provisions, although his government had acceded (with reservations) to the General Act.³⁹ The sub-committee finally agreed to a draft resolution to be proposed by the Interim Committee to the General Assembly for restoring the General Act of September 26, 1928, to its original efficacy. The resolution would instruct the Secretary General to prepare a revised text of the General Act, including the necessary amendments, and to hold it open to accession by states, under the title "Revised General Act for the Pacific Settlement of International Disputes." The amendments would only apply as between states having acceded to the General Act as thus amended, and, as a consequence, would not affect the rights of such states which are parties to the Act of September 26, 1928, as should claim to invoke it insofar as it might still be operative.⁴⁰

The joint proposal of China and the United States for the creation of a Panel for Enquiry and Conciliation was adopted by the sub-committee in the form of a draft resolution for adoption by the General Assembly. The draft resolution in its preamble emphasized the desirability of having qualified persons readily available to assist the organs of the United Nations in the settlement of disputes and situations by serving on commissions of enquiry or of conciliation. The essence of the draft resolution is found in the ten articles relating to the composition and use of the Panel for Enquiry and Conciliation. The Panel for Enquiry and Conciliation would consist of persons designated by member states by reason of their training,

³⁹ U.N. Doc. A/AC.18/73, July 19, 1948, p. 18.

⁴⁰ It may be noted that the General Act of 1928 consists of forty-seven articles divided into four chapters which deal mainly with conciliation, judicial settlement and arbitration. This General Act is now binding upon twenty-two states, including Sweden and The Netherlands, the latter states acceding only to Chapters I (conciliation), II (judicial settlement) and IV (general provisions). The General Act was approved September 26, 1928, by a resolution of the League of Nations Assembly, which also invited members of the League to become parties to the instrument.

experience, character and standing. Members of the panel would be designated for a term of five years and such designation would be renewable. Members of commissions appointed would not, in the performance of their duties, seek or receive instructions from any government. For the administrative arrangements in connection with the panel, the Secretary General of the United Nations would have general responsibility. The panel would be available at all times to organs of the United Nations to perform the task of enquiry or conciliation in connection with disputes or situations in respect of which the organs are exercising their functions. The panel would also be available at all times to all states, members or non-members of the United Nations, which are parties to any controversy, to perform tasks of enquiry or conciliation for the settlement of the controversy. The method of selecting members of a commission of enquiry or of conciliation from the panel would be determined in each case by the organ appointing the commission, or by agreement between the states parties to a controversy. Members of commissions so constituted by United Nations organs or by states would enjoy diplomatic privileges and immunities as laid down in the General Convention on the Privileges and Immunities of the United Nations. Finally, the members of the commissions would receive appropriate compensation for the period of their service.

In the field of arbitration, the Belgian representative made a specific suggestion that consideration be given to the possibility of enabling the parties to a dispute to confer on the Security Council arbitral powers. This suggestion was based on the advisory opinion given by the Permanent Court of International Justice concerning Article 3, paragraph 2, of the Treaty of Lausanne. This advisory opinion states, *inter alia*, that:

... though it is true that the powers of the Council, in regard to the settlement of disputes, are dealt with in Article 15 of the Covenant, and that, under that article, the Council can only make recommendations, which, even when made unanimously, do not of necessity settle the dispute, that article only sets out the *minimum* obligations which are imposed upon States and the minimum corresponding powers of the Council. There is nothing to prevent the parties from accepting obligations and from conferring on the Council powers wider than those resulting from the strict terms of Article 15, and, in particular, from substituting, by an agreement entered into in advance, for the Council's power to make a mere recommendation, the power to give a decision which, by virtue of their previous consent, compulsorily settles the dispute.⁴¹

It was the opinion of the sub-committee that the same principles discussed in regard to arbitration were in large part applicable in the realm of judicial settlement. Reference was made to the Brussels Treaty signed by Belgium, France, Luxembourg, The Netherlands and the United Kingdom on March 17, 1948, of which Article VIII, paragraph d, provides that

⁴¹ P.C.I.J., Series B, No. 12, p. 27.

where a case is appropriate in part for judicial consideration and in part for conciliation, either party may insist that judicial consideration of the legal questions precede conciliation.

There was also a proposal submitted by the Ecuadorian representative which included the following three recommendations:

- (1) When a situation or dispute is brought to the attention of the General Assembly or Security Council, and one of the parties concerned maintains that the matter is essentially within its domestic jurisdiction, (a) the President of the respective body or the Rapporteur or Conciliator appointed for the case will try to obtain from the parties an agreement that the matter be referred to the International Court of Justice for a decision; (b) should such agreement be impossible, the International Court be requested to give an advisory opinion.
- (2) Members of the United Nations be recommended to include in their bilateral or regional agreements dealing with pacific settlement of disputes that the International Court may decide the question whether a matter is within the domestic jurisdiction of the State; and the Interim Committee be asked to consider the advisability of including in any new general convention a provision to the same effect.
- (3) The International Law Commission be asked to define categories of matters considered by international law as falling within the domestic jurisdiction of the State; and to report on the advisability of preparing a multilateral convention extending the jurisdiction of the International Court to the matters which are essentially within the domestic jurisdiction of the State.⁴²

With regard to the method of resort to regional agencies or arrangements, it was suggested in a joint proposal of China and the United States that consideration be given to the types of disputes which are particularly susceptible of settlement by bipartite, regional or United Nations procedure.⁴³ Attention was drawn to the existing inter-American agreement on the pacific settlement of disputes, and also to the recently concluded Pact of Bogotá.⁴⁴

Sub-Committee Two prepared four draft resolutions to be proposed by the Interim Committee to the General Assembly in regard to pacific settlement of disputes. These draft resolutions were approved by the Interim Committee for transmission to the General Assembly and were attached as annexes to the report of the Interim Committee. They are as follows: (1) restoration to the General Act of September 26, 1928 of its original efficacy; (2) amendment of the General Assembly Rules of Procedure to entrust to the President the function of conciliation; (3) appointment of a *rapporteur* or conciliator for a situation or dispute brought to the attention

⁴² U.N. Doc. A/AC.18/63, June 16, 1948, and A/AC.18/SC.2/3, June 30, 1948.

⁴³ U.N. Doc. A/AC.18/46, March 16, 1948.

⁴⁴ U.N. Doc. A/AC.18/72, July 13, 1948.

of the Security Council; and (4) the creation of a panel for enquiry and conciliation.

THE LEGAL STATUS, PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES*

The legal bases of the status, privileges and immunities of the specialized agencies¹ are their constitutive instruments, their agreements with the United Nations,² and the Convention on Privileges and Immunities of the Specialized Agencies³ which was adopted by the General Assembly of the United Nations at its second session,⁴ to be accepted by the specialized agencies and acceded to by all members of the United Nations and by any other state member of a specialized agency. Among other legal sources of an implementing character may be cited national legislation⁵ and any site agreement concluded⁶ or to be concluded between a specialized agency and the country where the organization has its seat.

* Prepared at the editor's request by Miss Kwen Chen, Department of Political Science, University of Michigan.

¹ There are now nine such agencies which have entered into relationship with the United Nations in accordance with Articles 57 and 63 of the United Nations Charter. They are: The International Labor Organization (ILO); the United Nations Educational, Scientific and Cultural Organization (UNESCO); the Food and Agricultural Organization (FAO); the International Civil Aviation Organization (ICAO); the International Monetary Fund (FUND); the International Bank for Reconstruction and Development (BANK); the World Health Organization (WHO); the Universal Postal Union (UPU); and the International Telecommunications Union (ITU).

² Agreements with ILO, UNESCO, FAO and ICAO were approved by the United Nations General Assembly at the second part of its first session. For the texts of these agreements, see UN Docs. A/72, A/77, A/78, and A/106, Sept. 30, 1946; *General Assembly Journal*, No. 64, Supp. A—A/P.V./65, p. 732. Agreements with UPU, WHO, FUND, BANK and ITU were approved by the General Assembly at its second session. See *General Assembly Journal*, No. 54, p. 6. For the texts of these agreements, see UN Docs. A/347, A/348, A/349, Sept. 2, 1947; and A/370, Sept. 9, 1947.

³ See UN Docs. A/339, Aug. 20, 1947; A/C.6/148, Sept. 29, 1947; A/C.6/191, Nov. 15, 1947; A/503, Nov. 20, 1947.

⁴ General Assembly resolution 179 (II), Nov. 21, 1947; A/519, Jan. 8, 1948, p. 113.

⁵ The International Organizations Immunities Act of the United States, 1945, applied to FAO, ILO, UNESCO, ICAO and ITU, by Executive Orders nos. 9698 and 9863. See Public Law 291, 79th Cong., and *Federal Register*, Vol. 11, No. 36 (Feb. 20, 1946), p. 1809, and Vol. 12, No. 108 (June 3, 1947), p. 3559; the British Diplomatic Privileges (Extension) Act, 1944, together with the 1946 Amendment to the Act; the Canadian Treaties of Peace (Status of International Labour Organization) Order, Aug. 14, 1941; and the Chinese Order No. 4411 of the Executive Yuan, Feb. 19, 1943, extending privileges and immunities to the ILO.

⁶ For agreement between the Swiss Federal Council and the International Labor Organization concerning the legal status of the ILO in Switzerland, and the Arrangement for the execution of this agreement which came into force on May 27, 1946, see *International Labour Office—Official Bulletin*, Vol. XXIX, No. 2, Aug. 31, 1946. For Draft Agreement between the Swiss Federal Council and WHO, see *Official Record of WHO*, No. 4, p. 81.

The provisions of the constitutions of the various specialized agencies may be summarized under two headings:

(1) *Juridical personality and legal capacity*

ILO, the FUND, and the BANK are each accorded full juridical personality and the specific capacity (a) to contract, (b) to acquire and dispose of movable and immovable property, and (c) to institute legal proceedings. FAO is given "the capacity of a legal person to perform any legal act appropriate to its purpose which is not beyond the powers granted to it" by its constitution. In the case of UNESCO, WHO and ICAO, such legal capacity as may be necessary for the performance of their functions is conferred. However, the provision that ICAO is to possess full juridical personality is modified by the phrase "wherever compatible with the constitution and laws of the State concerned."⁷

(2) *Privileges and immunities*

The Constitutions of UNESCO, WHO, and ILO provide for the enjoyment by the respective organizations, their officials, and representatives of their members of such privileges and immunities as are necessary for the fulfillment of their purposes and the exercise of their functions.⁸ A limitation is imposed in the Constitution of the FAO which provides that "each Member nation undertakes, *insofar as it may be possible under its constitutional procedure*, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions including inviolability of premises and archives, immunity from suit, and exemptions from taxation."⁹ The Articles of Agreement on the FUND and the BANK contain detailed provisions with regard to privileges and immunities which are generally covered by the above-mentioned convention and will be discussed in a later part of this note.

Two aspects of the agreements between the United Nations and the specialized agencies are related to the present subject: (1) All the specialized agencies (except UPU) are authorized to request advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities other than questions concerning the mutual relationships of a specialized agency and the United Nations or other agencies; (2) under the authority of section 28, Article 7, of the General Convention on Privileges and Immunities of the United Nations (hereafter referred to as

⁷ Art. 47 of the Convention on International Civil Aviation.

⁸ It may be mentioned that ILO had also proposed a Convention on Privileges and Immunities for the Organization and its Members (for text see *ILO—Official Bulletin*, Vol. XXIX, No. 4, pp. 343-359). It was later suspended by a decision of the ILO in order to permit the adoption under the auspices of the United Nations of a single General Convention on the Privileges and Immunities of the Specialized Agencies.

⁹ Art. XV (*italics added*).

the General Convention), the privilege of using the United Nations *laissez-passer* is extended to officials of the BANK, the FUND, WHO, ITU, UPU, and ICAO.

In pursuance of the resolution on the coördination of the privileges and immunities of the United Nations and the specialized agencies,¹⁰ a Convention on the Privileges and Immunities of the Specialized Agencies (hereafter referred to as the Present Convention) was adopted at the second regular session of the General Assembly¹¹ which consists of two distinct parts: (1) a general chapter defining the standard privileges and immunities of the specialized agencies, and (2) a number of annexes setting out those divergencies from the standard privileges and immunities in the case of each specialized agency which does not require all the standard privileges or which, on account of the special nature of its functions, requires certain special privileges.

The standard clauses of the Present Convention are generally in line with the provisions of the General Convention, subject to only such modifications as reconsideration has made necessary. Thus, the specialized agencies are given juridical personality and the legal capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings. Their property and assets, wherever located and by whomsoever held, are immune from every form of legal process, and from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action. Their premises and archives are inviolable. Their assets, income and other property are exempt from taxation and from all customs duties. They also enjoy the facilities with respect to communications.¹²

Representatives of the members of the specialized agencies are to enjoy the same privileges and immunities as those granted to the representatives of the members of the United Nations under the General Convention.¹³ These include immunity from personal arrest or detention and from seizure of their personal baggage, immunity from legal process of all kinds,

¹⁰ *Journal of the General Assembly*, First Session, No. 34 (March 7, 1946), pp. 704-705.

¹¹ *Journal of the General Assembly*, Second Session, No. 60, pp. 3-4. The resolution was adopted at the 123rd plenary meeting of the General Assembly. At the preliminary stage of discussion, two procedural problems came up for determination: (1) whether the coördination and unification of privileges and immunities of the United Nations and the specialized agencies should be brought about by means of a single convention applicable to all the specialized agencies, or by some other means, such as by the drawing up of a model convention to be recommended to each specialized agency; the decision was in favor of the former method; (2) whether, if a single convention had been accepted in principle, a special conference should be summoned in connection with this convention, or whether this convention should be accepted definitely by the General Assembly of the United Nations; the decision was in favor of the latter.

¹² See Secs. 4-12.

¹³ See Secs. 13-17.

inviolability of all papers and documents, exemption from immigration restrictions, aliens' registration or national service obligations, and facilities in respect of currency or exchange restrictions. In order to secure complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Officials of the specialized agencies, like the officials of the United Nations, are given privileges and immunities on the basis of specified categories.¹⁴ The executive head of each specialized agency shall be accorded "in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law." Other officials shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. They are to enjoy the same privileges in respect of exchange facilities as officials of comparable rank of diplomatic missions. Repatriation facilities, in time of international crisis, and immunity from immigration restrictions and alien registration regulations are accorded not only to officials themselves but also to "their spouses and relatives dependent on them." They also enjoy the same exemptions from taxation in respect of salaries and emoluments paid to them by the specialized agencies on the same conditions as the officials of the United Nations.¹⁵

A compromise is envisaged in the provision with respect to the exemption of officials of the specialized agencies from national service obligations.¹⁶ No legal obligation is imposed upon a state to exempt its own nationals who are officials of any specialized agency from national service;

¹⁴ See Secs. 18-23.

¹⁵ In connection with this provision, the delegations of Canada, Egypt, and the USSR placed on record that they could not commit their governments to any exemptions of the salaries of officials who are their own nationals. See UN Doc. A/503, Nov. 20, 1947, p. 10. The United States had previously made a reservation to the provisions of the General Convention in this respect on the grounds that the right to exempt United States nationals from taxation and from national service obligations was a prerogative of the United States Congress. UN Doc. A/43/Rev.1.

¹⁶ See Sec. 20. This provision is largely a compromise as a result of the reservations made by certain countries to the provision of the General Convention in this respect. In discussing the Headquarters Agreement between the United Nations and the United States, the sub-committee in charge observed that "if the complete exemption of all officials of United States nationality from such obligations (i.e., national service) could not be accepted, it is most desirable that there should be no possibility of the work of the United Nations being hampered by the calling up of such officials." See Report of the Sixth Committee, UN Doc. A/427, Oct. 27, 1947, p. 7. The present provision accords with this opinion, and the delegation of the USSR made a special reservation as to the attitude of its government with regard to this matter. UN Doc. A/503, Nov. 20, 1947, p. 11.

only consultation between the agency and any government is required with a view to disrupting as little as possible the work of the organization.

Another new feature of the Present Convention has to do with the abuse of privilege. Waiver of immunity has been the usual method of counterbalancing the privileges and immunities granted to international organizations and their personnel. Right of denunciation by a state in the case of abuse of privilege was suggested but defeated. Instead, Section 24 of the Present Convention provides for a method of consultation between the state party to this convention and the specialized agency concerned to determine whether any such abuse has occurred. Failing the success of such consultation, the question would be referred to the International Court of Justice for an advisory opinion. Should the Court find that the abuse did occur, the state concerned might withhold from the specialized agency concerned the benefits of the privilege and immunity so abused. Section 25 further provides that the territorial authorities may expel any person, whether an official of a specialized agency or a representative of one of its members or a person who is entitled to diplomatic immunity under Section 21, committing abuse of privileges of residence by activities in that country outside his official functions.¹⁷

The Present Convention requires a specialized agency to make provision for appropriate modes of settlement (1) of disputes arising out of contracts or of a private law character to which the specialized agency is a party and (2) of disputes involving officials whose immunities are not waived. Consideration of the rapid increase of international organizations with at least partial immunity from suit on the one hand, and of the protection of private interests on the other hand, has brought forth various suggestions such as the establishment of a coördinated system of international arbitral tribunals or the setting up of a claims court within an international organization. Implementations of this character or any other possible measures are still awaiting future action.

Another phase of the settlement of disputes has to do with the rôle of the International Court of Justice. In the light of the provisions contained in the constitutions of the various specialized agencies,¹⁸ the agree-

¹⁷ These provisions are based on Sec. 13 (b) of the Headquarters Agreement between the United Nations and the United States. Another safeguard against abuse of privileges and immunities is provided by the resolution of the General Assembly of the United Nations, adopted on Feb. 13, 1946, that the Secretary General be instructed to assure that the drivers of all official motor cars of the United Nations and all members of the staff who own or drive motor cars should be properly insured against third-party risks. UN Doc. A/64, p. 83.

¹⁸ These constitutions provide for either a reference to the court or a decision by the executive organs of the respective agencies or by arbitration: Arts. 84-86 of ICAO; Art. XIV of UNESCO; Arts. 26, 29, 31 and 37 of ILO; Arts. 75 and 76 of WHO; Art. 15 of ITU; Art. 11 of UPU; Art. XXXVII of FAO; Art. XVIII of the FUNDA and Art. IX of the BANK.

ments between the United Nations and these agencies, and the Present Convention, the relationship between a specialized agency and the Court may be summarized as follows: (1) When two or more states members of a specialized agency differ as to the interpretation or application of the constitution, they may bring the case before the Court for a decision; (2) if a difference arises between one of the specialized agencies on the one hand and a member on the other hand, a request shall be made to the Court for an advisory opinion on any legal questions involved;¹⁹ (3) a specialized agency may ask the Court for an advisory opinion on questions relating to the interpretation or application of its constitution.²⁰ It therefore seems correct to say that these specialized agencies have been accorded a substantial degree of independent procedural capacity.

So far, this discussion has been confined to the standard clauses. Modifications of these clauses are made in the Annexes of the Present Convention which fall into two groups: the immunities of experts of the individual specialized agencies, and the particular privileges and immunities enjoyed by the BANK and the FUND because of the special nature of their functions. The first group of immunities has been provided for experts of FAO, ICAO, UNESCO, and WHO respectively.²¹ They include immunity from arrest or seizure of personal baggage, immunity in respect of words spoken or written or acts done by these experts in the performance of their official functions, immunity from legal process of every kind, and facilities in respect of currency or exchange restrictions. The BANK and the FUND are immune from the collection or payment of any tax or duty and from any discriminatory taxation.²² The two institutions differ, however, as to immunity from legal process. While the FUND is immune from every form of judicial process except upon its own waiver, actions may be brought against the BANK by private persons and corporations, but not by members or persons acting through members. Though the

¹⁹ Sec. 32 of the Present Convention. Cf. provisions in the agreements between the United Nations and the specialized agencies.

²⁰ See the particular sections of the constitutions of these agencies as indicated in note 18 above. It should be noted that the General Assembly of the United Nations, at its second session, adopted three resolutions on the "Need for Greater Use by the United Nations and its organs of the International Court of Justice." *Journal of the General Assembly*, No. 53, pp. 8-9. The first resolution recommends that organs of the United Nations and the specialized agencies, when duly authorized, should refer certain questions of principle, in particular, points of law, relating to the interpretation of the Charter of the United Nations or the constitutions of the specialized agencies, to the Court for an advisory opinion.

²¹ Annexes II, III, IV, and VII.

²² Annexes V and VI. Such immunity from taxation would be granted when (1) the discrimination against such obligation or security is solely because of its origin; or (2) the sole jurisdictional basis for such taxation is the place or the currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the FUND (BANK).

BANK can be sued, and a judgment may be rendered against it, its assets are to be immune from attachment or execution before the delivery of final judgment against the BANK. Furthermore, reference of disputes to the International Court of Justice (as provided by Section 32 of the standard clauses) "shall only apply to differences arising out of the interpretation or application of the privileges and immunities which are derived by the FUND (BANK) from this Convention and are not included in those which the FUND (BANK) can claim under its Articles or otherwise."²³

It is to be expected that such other organizations as the International Refugee Organization and the International Trade Organization will soon be brought into relationship with the United Nations. The General Assembly has recommended that any future inter-governmental organization to become a specialized agency or any international conference convened with a view to establishing such an agency should provide in its constitutional instrument that its privileges and immunities shall be governed by the Present Convention, and should consider such modifications as the special nature of the agency may require.²⁴ It is clear that the Present Convention is a considerable step toward the unification and coordination of privileges and immunities of the specialized agencies of the United Nations.

²³ Par. 2, Annex V (VI).

²⁴ Resolution adopted by the General Assembly in connection with the Present Convention, Appendix B, Resolution II. See UN Doc. A/503, Nov. 20, 1947, p. 44.

CHRONICLE OF INTERNATIONAL EVENTS

FOR THE PERIOD MAY 1-JULY 31, 1948

(Including earlier events not previously noted)

WITH REFERENCES

Abbreviations: *A. E. C. O. R.*, U. N. Atomic Energy Commission Official Records; *C. I. E. D.*, Chronology of International Events and Documents, Royal Institute of International Affairs; *C. S. Monitor*, Christian Science Monitor; *Cmd.*, Great Britain Parliamentary Papers by Command; *Cong. Rec.*, Congressional Record; *D. & S. P.*, Department of State Documents & State Papers; *D. S. B.*, Department of State Bulletin; *E. S. C. O. R.*, United Nations Economic and Social Council Official Records; *F. A. O.*, Food & Agriculture Organization; *G. A. (III) O. R.*, Official Records of the Third Session of the U. N. General Assembly; *G. B. M. S.*, Great Britain Miscellaneous Series; *G. B. T. S.*, Great Britain Treaty Series; *I. B. E. D.*, International Bank for Reconstruction and Development; *I. C. E. F.*, International Children's Emergency Fund; *I. C. J.*, International Court of Justice; *I. E. F. C.*, International Emergency Food Council; *I. I. S.*, India Information Services [Press Release]; *I. M. F.*, International Monetary Fund; *I. T. U.*, International Telecommunications Union; *N. Y. T.*, New York Times; *P. A. U.*, Pan American Union; *S. C. O. R.*, United Nations Security Council Official Records; *T. I. A. S.*, U. S. Treaties and other International Acts Series; *U. N. B.*, United Nations Bulletin; *U. N. P. R.*, United Nations Press Release; *U. P. U.*, Universal Postal Union.

GENERAL*

September, 1947

- 29 ETHIOPIA—GREAT BRITAIN. Exchanged notes at Addis Ababa amending the description of the Kenya-Ethiopia boundary. Text with annex and map: *G. B. T. S.* No. 18 (1948), *Cmd.* 7374.

October, 1947

- 30 BELGO-LUXEMBOURG ECONOMIC UNION—UNITED STATES. Signed agreement and exchanged notes at Geneva in regard to the General Agreement on Tariffs and Trade [effective Jan. 1, 1948]. Texts: *T. I. A. S.* 1701.
- 30 FRANCE—UNITED STATES. Signed agreement and exchanged notes at Geneva in regard to the General Agreement on Tariffs and Trade [effective Jan. 1, 1948]. Texts: *T. I. A. S.* 1704.

January, 1948

- 24 GREAT BRITAIN—POLAND. Exchanged notes at Warsaw concerning compensation for British interests affected by Polish nationalization law of Jan. 3, 1946. Text: *G. B. T. S.* No. 23 (1948), *Cmd.* 7403.

March, 1948

- 11 GREAT BRITAIN—NETHERLANDS. Exchanged notes at London for settlement of wartime debts. Text: *G. B. T. S.* No. 17 (1948), *Cmd.* 7358.

* See p. 917 below for United Nations and Specialized Agencies; also p. 724 and following for Multipartite Conventions.

- 12 GREAT BRITAIN—NETHERLANDS. Exchanged notes at London abrogating Supplementary Monetary Agreement of Feb. 26, 1947, and regulating availability of sterling. Text: *G. B. T. S.* No. 20 (1948), *Cmd.* 7881.

April, 1948

- 15-June 8 EUROPEAN ECONOMIC COÖPERATION. Under terms of Foreign Assistance Act U. S. exchanged notes with the following: Greece, Apr. 15, May 12; Bipartite Board U. S.-U. K. Occupation Zones of Germany, May 1, 14; Turkey, May 18; Military Government, French Zone, June 3. Sweden and Luxembourg announced May 7 letters of intent. *D. S. B.*, May 30, 1948, p. 712; June 27, pp. 838-839. Texts: *D. S. B.*, May 16, 1948, pp. 640-646; May 30, pp. 709-710; June 13, p. 779.

- 23-June 10 SAFETY OF LIFE AT SEA CONFERENCE. Held in London, with 30 countries represented. Summary of meeting: *D. S. B.*, July 25, 1948, pp. 119-121.

May, 1948

- 1 FRANCE—SPAIN. Announced signature of commercial agreement. *N. Y. T.*, May 2, 1948, p. 21.
- 1 GREAT BRITAIN—HUNGARY. Negotiated trade agreement. *C. I. E. D.*, Apr. 23/May 6, 1948, p. 290; *London Times*, May 8, 1948, p. 4.
- 1 KOREAN OCCUPATION (Soviet Zone). Government of northern Korea adopted constitution applicable to all Korea, with capital at Seoul. *N. Y. T.*, May 1, 1948, p. 1.
- 1-10 AMAZON CONFERENCE. Held at Tingo María, Peru. Ten nations signed 2 agreements, creating International Institute of Hylean Amazon. *N. Y. T.*, May 11, 1948, p. 12.
- 3 COLOMBIA—SOVIET RUSSIA. Diplomatic relations broken off by Colombia. *N. Y. T.*, May 4, 1948, p. 1; *London Times*, May 5, 1948, p. 3.
- 4 CHINA—UNITED STATES. President Truman issued U. S. proclamation putting into effect provisions of General Agreement on Tariffs and Trade of Oct. 30, 1947. *D. S. B.*, May 16, 1948, pp. 652-653.
- 19-22 SOVIET RUSSIA—UNITED STATES. Department of State released statement on status of issues between the two countries. Extracts: *N. Y. T.*, May 20, 1948, p. 8; *London Times*, May 20, 1948, p. 4. Text of statement: *D. S. B.*, May 30, 1948, pp. 705-706. On May 23 Moscow radio broadcast reply and blamed U. S. policy for discord. *N. Y. T.*, May 23, 1948, p. 1. 9 points: *C. I. E. D.*, May 21/June 3, 1948, pp. 384-385. Text: *Moscow News*, May 25, 1948, p. 2.
- 6 DENMARK—UNITED STATES. Signed at Washington a convention for avoidance of double taxation and prevention of tax evasion. *D. S. B.*, May 16, 1948, p. 653. Text: *Cong. Rec.* (daily) June 17, 1948, pp. 8886-8888.
- 7-10 CONGRESS OF EUROPE. Met at The Hague with 22 nations represented. Called by a joint international committee of movements for European unity. *N. Y. T.*, May 8, 1948, pp. 1, 6. Winston Churchill was principal speaker. Text of address: p. 6; *London Times*, May 8, 1948, p. 4. Adopted a resolution calling for some form of European federation. *London Times*, May 11, 1948, p. 4.
- 9 PRISONERS OF WAR. Yugoslavia announced that all German and Austrian prisoners would be released by the end of the year. *N. Y. T.*, May 10, 1948, p. 6.

- 9/June 8 CZECHOSLOVAKIA. Parliament adopted unanimously a new constitution. *N. Y. T.*, May 10, 1948, p. 16; *London Times*, May 10, 1948, p. 3. It was signed June 8 by Premier Gottwald. *N. Y. T.*, June 9, 1948, p. 1.
- 10 GERMAN PROPERTY. U. S., Great Britain, France and Spain signed agreement at Madrid for liquidation of German private assets in Spain. *N. Y. T.*, May 11, 1948, p. 21.
- 11 SOUTH PACIFIC COMMISSION. First session opened at Sydney, Australia. *London Times*, May 12, 1948, p. 3. Immediate work of Commission to increase food production and raise nutritional standards. Headquarters will be at Noumea or Suva. Next session will be at Sydney in October. *London Times*, June 12, 1948, p. 3.
- 18 GOLD. Bank for International Settlements agreed to deliver to U. S., Great Britain and France on demand 3740 kilograms of fine gold (about \$4,200,000) in full settlement of all looted gold acquired by it from Germany. The gold will be redistributed by Tripartite Commission for the Restitution of Monetary Gold at Brussels, pursuant to Paris Reparations Agreement. *D. S. B.*, May 30, 1948, p. 713. Text: *G. B. T. S.* No. 38 (1948), *Cmd.* 7456.
- 13-June 80 PALESTINE. Statement prepared by Colonial and Foreign Offices was issued reviewing British administration under League of Nations Mandate. *N. Y. T.*, May 14, 1948, p. 1. Text: p. 4. British High Commissioner left Holy Land as League Mandate ended on May 15. *N. Y. T.*, May 15, 1948, p. 1; *London Times*, May 15, 1948, p. 4. Last British soldiers sailed from Haifa, June 30. *N. Y. T.*, July 1, 1948, p. 1.
- 14 UNITED STATES—VENEZUELA. Signed air transport agreement in Caracas. *D. S. B.*, May 30, 1948, pp. 716-717.
- 14/16 ISRAEL. Jews in Palestine declared independence, effective May 15. *N. Y. T.*, May 15, 1948, p. 1. Text: p. 2; *Current History*, July, 1948, pp. 41-42; *C. I. E. D.*, May 7/20, 1948, p. 331. David Ben-Gurion and Moshe Shertok became Premier and Foreign Minister, respectively. *N. Y. T.*, May 15, 1948, p. 1. Dr. Chaim Weizmann was elected President of the Council of Government. *N. Y. T.*, May 17, 1948, p. 1.
- 14-June 26 ISRAELI RECOGNITION. Granted: U. S., *de facto*. *N. Y. T.*, May 15, 1948, p. 1; *D. S. B.*, May 23, 1948, p. 673. Soviet Russia, May 17. *N. Y. T.*, May 18, 1948, p. 1. Text of Soviet note: p. 5; *Moscow News*, May 18, 1948, p. 2; Poland, Czechoslovakia and Uruguay, May 18. *N. Y. T.*, May 19, 1948, p. 3; *London Times*, May 20, 1948, p. 4. South Africa, *de facto*, May 24. *N. Y. T.*, May 25, 1948, p. 3; *London Times*, May 25, 1948, p. 4. Venezuela, June 26. *N. Y. T.*, June 27, 1948, p. 13.
- 17/June 19 FRANCE—UNITED STATES. Signed supplementary protocol at Washington on May 17, modifying convention of Oct. 18, 1946, relating to double taxation. *D. S. B.*, May 30, 1948, p. 711. Text: 80th Cong., 2d sess. *Executive G.* U. S. ratified convention and protocol June 19. *N. Y. T.*, June 20, 1948, p. 3.
- 18 CHINA—GREAT BRITAIN. Exchanged notes for transfer of certain British naval vessels to China and mutual waiver of claims in respect of loss of other vessels. Text (with annex): *G. B. T. S.* No. 39 (1948), *Cmd.* 7457.

- 18/June 5 ITALY—YUGOSLAVIA. Italian notes to U. S., France, Great Britain and Russia announced no agreement reached with Yugoslavia over their common frontier and asked the 4 Powers to intervene and refer question to their Ambassadors. Announcement was made of favorable British and American replies. *C. I. E. D.*, May 7/20, 1948, p. 829; June 4/17, 1948, p. 415; *London Times*, May 21, 1948, p. 8.
- 20 AUSTRIAN OCCUPATION. Austria sent note to Allied Council protesting a charge of the 1948 occupation costs which amounted to 10½% of the federal budget. *C. I. E. D.*, May 7/20, 1948, p. 315.
- 20 CHINA. Generalissimo Chiang Kai-shek and Marshal Li Tsung-jen inaugurated first constitutional President and Vice President, respectively. *D. S. B.*, May 30, 1948, p. 713.
- 21 BRAZIL—GREAT BRITAIN. Signed trade treaty at Rio de Janeiro. *London Times*, May 22, 1948, p. 4. Text: *G. B. T. S.* No. 33 (1948), *Cmd.* 7438.
- 21 INDIA—SWEDEN. Signed air transport agreement at New Delhi. *I. I. S.*, No. 3695/GA.
- 21/June 3 ITALIAN COLONIES. Four-power commission to report on former Italian colonies to deputies of Council of Foreign Ministers, arrived in Rome. Yugoslav note to deputies suggested colonies be placed under U. N. trusteeship in care of Italy, with certain exceptions. *London Times*, May 22, 1948, p. 8; June 10, 1948, p. 3; *C. I. E. D.*, May 21/June 3, 1948, p. 353.
- 24/27 GREAT BRITAIN—LUXEMBOURG. Exchanged notes at London for reciprocal facilities for operation of a commercial air service. Text: *G. B. T. S.* No. 35 (1948), *Cmd.* 7445.
- 24 PEACE TREATY (Austrian). Treaty talks indefinitely postponed. *N. Y. T.*, May 25, 1948, p. 11. Text of U. S. State Department's general statement: *D. S. B.*, June 6, 1948, pp. 746-747.
- 25 POLAND—UNITED STATES. U. S. Department of State announced it wished to terminate activities of the Mixed Nationality Commission. *D. S. B.*, June 13, 1948, pp. 781-782.
- 26 FRANCE—POLAND. Signed 5-year trade agreement in Warsaw. *Polish Facts & Figures* (London), June 5, 1948, p. 2.
- 29 POLAND. Ministry of Foreign Affairs issued communiqué reserving exclusive right to decide on Polish citizenship. *Polish Facts & Figures* (London), June 5, 1948, p. 3.
- 29 SOVIET RUSSIA—UNITED STATES. Department of State in a document submitted to Senate Foreign Relations Committee listed 37 alleged violations of pacts by Soviet Russia. *N. Y. T.*, May 30, 1948, p. 1. Text: p. 2; *D. S. B.*, June 6, 1948, pp. 738-744.
- 29/30 BULGARIA—POLAND. Signed at Warsaw a 20-year treaty of friendship and mutual assistance. *N. Y. T.*, May 30, 1948, p. 3. Text: *D. & S. P.*, July, 1948, pp. 248-249. Certain articles: *Polish Facts & Figures* (London), June 12, 1948, p. 1. Signed also a 5-year trade agreement. *Polish Facts & Figures* (London), June 5, 1948, p. 1.

- 31/July 12 KOREAN OCCUPATION (U. S. Zone). Korean National Representative Assembly held 1st meeting. *N. Y. T.*, June 1, 1948, p. 1. Adopted constitution for "Democratic Republic of Korea." Summary: *N. Y. T.*, July 13, 1948, p. 19.

June 1948

- 1 TRIESTE. U. S., Great Britain, and France sent notes to Russia concerning return of Trieste to Italy. *N. Y. T.*, June 2, 1948, p. 13; *London Times*, June 2, 1948, p. 4; *C. I. E. D.*, May 21/June 3, 1948, p. 356. Text of U. S. note: *D. S. B.*, June 13, 1948, p. 778.

- 1-12 BULGARIA—GREECE. Bulgaria offered to resume diplomatic relations. *N. Y. T.*, June 12, 1948, p. 8. Text of Bulgarian proposals: *U. N. P. R. BAL/339*. Greece accepted on the 12th. *N. Y. T.*, June 13, 1948, p. 32; *London Times*, June 14, 1948, p. 3. Impasse in negotiations at first meeting. Text of note: *U. N. P. R. BAL/349*. Greek version of negotiations. Text: *U. N. P. R. BAL/351*.

- 1-July 31 GERMAN OCCUPATION. Six-Power conference at London to consider political and economic future of Germany [opened Feb. 23 last] ended June 1. *London Times*, June 2, 1948, p. 4. On June 7, Great Britain, France, U. S. and Benelux countries made public agreed recommendations for a government for western Germany. Text: *London Times*, June 8, 1948, p. 3. Text of communiqué: *N. Y. T.*, June 8, 1948, p. 14; *D. S. B.*, June 20, 1948, pp. 807-810. Department of State's explanation of recommendations: *D. S. B.*, June 20, pp. 811-813. Polish notes of the 17th and 18th to France, Great Britain, and U. S. protested 6-Power decision. *London Times*, June 19, 1948, p. 4. Partial texts: *Polish Facts & Figures* (London), June 26, 1948, pp. 2, 4. Polish protest rejected. Text of U. S. note: *N. Y. T.*, July 8, 1948, p. 6; *D. S. B.*, July 18, 1948, pp. 86-87. German counter-proposals presented July 15. *N. Y. T.*, July 16, 1948, p. 6. Text, including appended "occupation statute": *N. Y. T.*, July 20, 1948, p. 4. Western Powers' proposals were presented to Soviet Russia July 31. *N. Y. T.*, Aug. 1, 1948, p. 1.

- 3 AUSTRALIA—POLAND. Signed agreement at Lake Success by which Australia would provide Poland with raw wool. *C. I. E. D.*, May 21/June 3, 1948, p. 373.

- 3-July 16 EUROPEAN ECONOMIC COÖPERATION ORGANIZATION. Council of Organization held 3rd meeting in Paris. *London Times*, June 4, 1948, p. 3. German observer attended for the first time. *C. I. E. D.*, May 21/June 3, 1948, p. 355. Approved program of needs and resources for 3rd quarter of 1948. *C. I. E. D.*, June 4/17, 1948, p. 401. Council accepted responsibility for allocation of E. R. P. credits. Agreed that Anglo-American zone of Trieste should receive aid. *C. I. E. D.*, July 9/22, 1948, p. 484.

- 3/July 12 REPARATIONS (Finnish). Finnish Premier announced that Russia had reduced Finland's payments by 50%, and had granted Finland a loan of about \$5,000,000 to acquire raw materials. *N. Y. T.*, June 4, 1948, p. 8. Text of Russian statement: *Moscow News*, June 4, 1948, p. 2. Finnish Minister of Trade announced that cut amounted to \$74,000,000 at prewar rate. *N. Y. T.*, July 13, 1948, p. 17.

- 5 CUSTOMS UNION. Representatives of Colombia, Ecuador, Panama and Venezuela in Quito approved a customs union for those countries. *N. Y. T.*, June 6, 1948, p. 55.

- 5 EGYPT—GREAT BRITAIN. Egyptian Foreign Affairs Commission issued report rejecting draft agreement on the Sudan. Summary: *C. I. E. D.*, June 4/17, 1948, p. 399.
- 5 FRANCE—FRENCH INDO-CHINA. Signed agreement at Haiphong by which France recognized Viet Nam as a member of the French Union. Formation of a provisional government was started. *N. Y. T.*, June 6, 1948, p. 32; *C. I. E. D.*, June 4/17, 1948, pp. 429-430.
- 7 ARGENTINA—YUGOSLAVIA. Signed commercial agreement at Buenos Aires. *N. Y. T.*, June 8, 1948, p. 3.
- 7 BELGIUM—GREAT BRITAIN. Exchanged notes at Brussels for reciprocal compensation in respect of war damage. Text: *G. B. T. S.* No. 56 (1948), *Cmd.* 7495.
- 7 REPARATIONS (Hungarian). Russian note informed Hungary that Russia had cut in half the balance due on reparation payments, beginning July 1, 1948. *N. Y. T.*, June 9, 1948, p. 9.
- 7 REPARATIONS (Rumanian). Russian note informed Rumania that Russia had cut in half the balance due on reparations payments, beginning July 1, 1948. *N. Y. T.*, June 9, 1948, p. 9.
- 7/14 CZECHOSLOVAKIA. Edvard Beneš resigned as President. *N. Y. T.*, June 8, 1948, p. 1; *London Times*, June 8, 1948, p. 4. Klement Gottwald became President. *N. Y. T.*, June 15, 1948, p. 22; *London Times*, June 15, 1948, p. 4. Cabinet members: *N. Y. T.*, June 16, 1948, p. 23.
- 8 BELGIUM—LUXEMBOURG—NETHERLANDS. Adopted plans to make a Benelux economic union effective in 1950. *N. Y. T.*, June 9, 1948, p. 16.
- 11 FRANCE—GREAT BRITAIN. Signed at Paris a convention providing reciprocal social security rights. *London Times*, June 14, 1948, p. 3. Text: *France* No. 2 (1948), *Cmd.* 7455.
- 11 GREAT BRITAIN—NETHERLANDS. Exchanged notes at London concerning regulation of trade and payments between Singapore and Federation of Malaya and Netherlands Indies. Text: *G. B. T. S.* No. 48 (1948), *Cmd.* 7487.
- 11 RUMANIA. National Assembly approved legislation to nationalize practically all industries, mines, banks, insurance companies and transport. *N. Y. T.*, June 12, 1948, p. 4.
- 12 INDIA—VATICAN. Decided to establish diplomatic relations. *C. I. E. D.*, June 4/17, 1948, p. 429.
- 12 SWEDEN—UNITED STATES. Agreed to extend agreement of June 24, 1947, concerning Swedish import restrictions. Text: *D. S. B.*, July 11, 1948, p. 53.
- 12-July 12 KOREAN OCCUPATION. U. S. and Soviet Russia exchanged notes on June 12, 25, 26 and July 12 on delivery of power to the southern zone. Texts: Department of State [*Press Release*], No. 605; *D. S. B.*, July 11, 1948, pp. 50-51, and Aug. 1, pp. 147-148.
- 14/July 10 CZECHOSLOVAKIA—POLAND. Signed trade agreement. *C. I. E. D.*, June 4/17, 1948, p. 419. Signed protocol in Warsaw on trade turnover for the period July 1, 1948-June 30, 1949. *Polish Facts & Figures* (London), July 24, 1948, p. 4.

- 16 FRANCE—INDIA. Signed agreement for restoration of their nationals' funds and property, frozen during the war. *I. I. S.* No. 8716/GA.
- 15/July 11 REPARATIONS (German). Inter-Allied Reparation Agency called on Switzerland to make available immediately 100 million Swiss francs due as part payment in accordance with agreement of May, 1946. Also requested speediest possible liquidation of German property in Switzerland. *N. Y. T.*, June 16, 1948, p. 22. Swiss Government announced assignment of 20 million Swiss francs to I.R.O. as part of liquidation of German assets. *London Times*, July 12, 1948, p. 3.
- 17 PORTUGAL—UNITED STATES. Department of State released statement on negotiations concerning continuation of U. S. military bases in Azores. *D. S. B.*, June 27, 1948, p. 839.
- 18 HUNGARY—POLAND. Concluded treaty of friendship, coöperation and mutual assistance. Summary: *Polish Facts & Figures* (London), June 26, 1948, p. 3.
- 19-July 30 GERMAN OCCUPATION (Currency). Russian Commander issued proclamation to German people banning new currency. Excerpts: *N. Y. T.*, June 20, 1948, p. 43. Text: *USSE Information Bulletin* (Washington), July 14, 1948, pp. 401-403. New currency was validated in British, French and American zones on June 20. Text of statement by the 3 Powers: *D. S. B.*, June 27, 1948, pp. 836-837. Outline of currency reform law: pp. 835-836; *N. Y. T.*, June 27, 1948, p. 4; *London Times*, June 28, 1948, p. 3. On June 22 Soviet Commander of Russian zone ordered new currency for that zone and also sectors of Berlin. *N. Y. T.*, June 23, 1948, pp. 1, 21. Russian Commander accepted British proposal for 4-Power discussions of uniform reform law in Berlin on June 22. *N. Y. T.*, June 22, 1948, p. 1. 3 Western Powers announced 3rd currency reform law June 26. Summary: *D. S. B.*, Aug. 1, 1948, pp. 141-143. Russian establishment of Trade Company of Greater Berlin, to expedite trade, using Russian zone Deutsche marks, was announced July 30. *N. Y. T.*, July 31, 1948, p. 6.
- 22 CHINA—UNITED STATES. Chinese Legislative Yuan accepted terms of U. S. \$400,000,000 foreign aid offer. *N. Y. T.*, June 23, 1948, p. 20.
- 22 ISRAEL—UNITED STATES. President Truman announced exchange of diplomatic missions and named James G. McDonald as U. S. representative. Eliahu Epstein is to head Israeli mission. *N. Y. T.*, June 23, 1948, p. 24; *D. S. B.*, July 4, 1948, p. 22.
- 22 ITALY—SWITZERLAND. Signed agreement in Rome for abolition of visas for Italian emigrants en route to Belgium, for conclusion of a convention concerning social insurance for Italian workers in Switzerland, and regulating minor movement of local populations across the frontier. *London Times*, June 24, 1948, p. 3.
- 22 NETHERLANDS—SOVIET RUSSIA. Signed trade and payments agreement at The Hague. *N. Y. T.*, June 23, 1948, p. 22.
- 23 GREAT BRITAIN—SPAIN. Signed commercial treaty at Madrid. *N. Y. T.*, June 24, 1948, p. 18. Text: *G. B. T. S.* No. 37 (1948), *Cmd.* 7449.
- 23 • INDIA—PAKISTAN. Signed at Karachi an air transport agreement to come into force July 1st. *I. I. S.* No. 3724/GA.

- 23-July 26 GERMAN OCCUPATION (Blockade). Russians halted all rail traffic into western sectors of Berlin and shut off electric power generated in eastern sector. *N. Y. T.*, June 24, 1948, p. 1. Milk and food were cut off June 24. *London Times*, June 25, 1948, p. 4. On July 6 U. S., Great Britain and France sent notes to Russia demanding end of blockade. *N. Y. T.*, July 7, 1948, p. 1; *London Times*, July 7, 1948, p. 4. Text of British note: *London Times*, July 10, 1948, p. 8. Text of U. S. note: *D. S. B.*, July 18, 1948, pp. 85-86. Partial text of French note: *C. I. E. D.*, June 18/July 8, 1948, p. 443. Text of Soviet reply: *USSR Information Bulletin* (Washington), July 28, 1948, pp. 427-428; *N. Y. T.*, July 15, 1948, p. 16; *London Times*, July 16, 1948, p. 3. U. S. and British military governments ordered all international railway traffic through western zones halted July 26. *N. Y. T.*, July 27, 1948, p. 1; *London Times*, July 27, 1948, p. 4.
- 24/July 1 GERMAN OCCUPATION. Russian proclamation to people of Berlin declared that Allied Kommandatura had "to all intents and purposes" ceased to exist. *London Times*, June 25, 1948, p. 4. Colonel Kalinin (Russia) announced Russian decision to withdraw from Kommandatura. *London Times*, July 2, 1948, p. 4; *N. Y. T.*, July 2, 1948, p. 1.
- 25 GREAT BRITAIN-ITALY. Signed air transport agreement. *C. I. E. D.*, June 18/July 8, 1948, p. 460.
- 25-Sept. 15 RADIO CONFERENCE. Met at Copenhagen to consider re-allocation of wavelengths, first meeting since the war. 32 countries were represented. *London Times*, June 26, 1948, p. 3. 25 countries signed convention, 7 abstaining. *London Times*, Sept. 16, 1948, p. 8.
- 26 GREAT BRITAIN-PHILIPPINE REPUBLIC. Turtle and Mangsee Islands, formerly administered by Great Britain under treaty with U. S., were transferred to the Philippine Republic. *C. I. E. D.*, June 18/July 8, 1948, p. 464.
- 26 GREAT BRITAIN-UNITED STATES. Exchanged notes relating to most-favored-nation treatment of areas under military occupation. Text: *D. S. B.*, July 11, 1948, pp. 43-44.
- 26 GREAT BRITAIN-UNITED STATES. Initialled *ad referendum* at Washington an economic coöperation agreement. Text: *United States No. 1* (1948), *Cmd.* 7446. [See also *United States No. 2* (1948), *Cmd.* 7447 for text of notes to be exchanged at time of signature of economic coöperation agreement.]
- 28 GREECE-UNITED STATES. Exchanged notes relating to most-favored-nation treatment for areas under military occupation. Text: *D. S. B.*, July 11, 1948, pp. 43-44.
- 28 IRELAND-UNITED STATES. Exchanged notes relating to most-favored-nation treatment for areas under military occupation. Text: *D. S. B.*, July 11, 1948, pp. 43-44.
- 28 ISRAELI RECOGNITION. Syria protested U. S. recognition. Text: *U. N. Doc.* S/868.
- 28 ITALY-UNITED STATES. Exchanged notes relating to most-favored-nation treatment for areas under military occupation. Text: *D. S. B.*, July 11, 1948, pp. 43-44.
- 28 PAN AMERICAN RAILWAY CONGRESS. President Truman signed bill authorizing U. S. membership. *N. Y. T.*, June 29, 1948, p. 2.

- 28-July 14 EUROPEAN ECONOMIC COÖPERATION. Under terms of Foreign Aid Appropriation Act U. S. signed formal agreements with: France, Ireland and Italy, June 28; Belgium, July 2; Norway and Sweden, July 3; Turkey, July 4; Great Britain, July 6; Bizonal area of Germany, July 14. *N. Y. T.*, June 29, 1948, p. 14; *London Times*, June 29, 1948, p. 4; July 3, 1948, p. 3; *N. Y. T.*, July 4, p. 2; July 5, p. 5; July 7, p. 3, July 15, p. 13. Texts of Italian, French and British agreements: *D. S. B.*, July 11, 1948, pp. 38-42, 57; *T. I. A. S.*, 1783; *G. B. T. S.* No. 41 (1948), *Cmd.* 7469. Status of agreements July 4: *D. S. B.*, July 25, 1948, p. 104.
- 29 LABOR FEDERATION. Formation of an Asian Federation of Labor with members in India, Burma, Pakistan, China, Philippine Republic and Indonesia was announced at International Labor Conference at San Francisco. Its constitution grants membership application rights to national organizations in the Asiatic area. *N. Y. T.*, June 30, 1948, p. 10.
- 29 PALESTINE-PANAMA. President Jimenez issued a decree forbidding ships and planes under Panamanian registry to transport men of military age and arms to Palestine and Arab countries. *N. Y. T.*, June 30, 1948, p. 7.
- July, 1948
- 2 ETHIOPIA-INDIA. Indian Government announced decision to establish diplomatic relations at legation level. *I. I. S.* No. 3733/GA.
- 2 SOVIET RUSSIA-UNITED STATES. U. S. demanded that Russia return 31 ships obtained under lend-lease. Payment to concerns in U. S. for use of their patented processes during the war was also asked. *London Times*, July 5, 1948, p. 3; *N. Y. T.*, July 3, 1948, p. 1. Text: p. 3; *D. S. B.*, July 11, 1948, p. 51.
- 8 CHINA-UNITED STATES. Signed agreement at Nanking on use of funds of the E.C.A. Terms are similar to those of agreements signed by U. S. with European nations. *N. Y. T.*, July 4, 1948, p. 3; *London Times*, July 6, 1948, p. 3. Text, with exchange of notes: *China Magazine* (N. Y.), Aug. 1948, pp. 48-60.
- 6 EUROPEAN ECONOMIC COÖPERATION. Great Britain and U. S. exchanged notes at London on application of most-favored-nation treatment to western Germany and Free Territory of Trieste. Text: *G. B. T. S.* No. 42 (1948), *Cmd.* 7470.
- 7 GREAT BRITAIN-NETHERLANDS. Signed 5-year cultural convention at The Hague. *C. I. E. D.*, June 18/July 8, 1948, p. 462.
- 8 POLAND-SOVIET RUSSIA. Signed treaty fixing mutual frontier. *N. Y. T.*, July 9, 1948, p. 3.
- 9 GREAT BRITAIN-NORWAY. Signed agreement in London supplementary to Monetary Agreement of Nov. 8, 1945. Text: *G. B. T. S.* No. 46 (1948), *Cmd.* 7474.
- 12 GREAT BRITAIN-UNITED STATES. Signed agreement settling wartime lend-lease and reciprocal aid accounts, and intergovernmental claims. Text: Dept. of State [*Press Release*], July 15, 1948, No. 566.
- 15 PALESTINE. Secretary General of Arab League proposed formula for a long-term truce in Palestine. Summary: *N. Y. T.*, July 16, 1948, p. 9.
- 16 BULGARIA-HUNGARY. Signed 20-year treaty of friendship and mutual aid. *N. Y. T.*, July 17, 1948, p. 4; *C. I. E. D.*, July 9/22, 1948, p. 493.

- 17 FRANCE—ITALY. Announced agreement whereby France returns to Italy certain territory ceded to France under Italian Peace Treaty. *N. Y. T.*, July 18, 1948, p. 29; *C. I. E. D.*, July 9/22, 1948, p. 484.
- 17 GREAT BRITAIN—IRAQ. Exchanged notes for extension of Supplementary Financial Agreement, signed in Baghdad, Nov. 17, 1947. *C. I. E. D.*, July 9/22, 1948, pp. 490-491.
- 17 RUMANIA—VATICAN. Rumania denounced its 1929 Concordat with the Vatican. *N. Y. T.*, July 18, 1948, p. 17.
- 19 UNITED STATES—YUGOSLAVIA. Signed agreements settling U. S. claims resulting from nationalization of property in Yugoslavia and settling lend-lease accounts. U. S. Treasury Dept. released previously blocked Yugoslav funds. *N. Y. T.*, July 20, 1948, pp. 1, 7. Text of agreements: *D. S. B.*, Aug. 1, 1948, pp. 137-140.
- 19-20 WESTERN EUROPEAN UNION. Consultative Council met at The Hague. *London Times*, July 20, 1948, p. 4. Text of communiqué: *London Times*, July 21, 1948, p. 4; *N. Y. T.*, July 21, 1948, p. 8.
- 20 GREAT BRITAIN—PERU. Signed payments agreement at Lima. Text: *G. B. T. S.* No. 58 (1948), *Cmd.* 7498.
- 20/24 KOREA. Syngman Rhee elected first President of the Republic. *N. Y. T.*, July 20, 1948, p. 12. Took office July 24. *N. Y. T.*, July 24, 1948, p. 4; *U. N. B.*, Sept. 1, 1948, p. 708.
- 21 CZECHOSLOVAKIA—RUMANIA. Signed at Bucharest a treaty of friendship and alliance. *C. I. E. D.*, July 9/22, 1948, p. 483; *N. Y. T.*, July 22, 1948, p. 8.
- 21 HUNGARY—RUMANIA. Signed trade treaty. *C. I. E. D.*, June 18/July 8, 1948, p. 465.
- 21-26 GERMAN OCCUPATION. Eleven Minister Presidents of western Germany held meetings at Frankfurt to consider Allied proposals for western German government. *N. Y. T.*, July 23, 1948, p. 3. Agreed to launch new state. *N. Y. T.*, July 27, 1948, p. 1; Aug. 19, 1948, p. 4.
- 22 NEWFOUNDLAND. Held referendum and voted to join Canadian Dominion. *N. Y. T.*, July 31, 1948, pp. 1, 7; Aug. 4, p. 9.
- 24-August 10 ECONOMIC CONFERENCE. Greater Colombian Economic Conference, with representatives from Colombia, Venezuela, Ecuador and Panama, held at Quito. Recommended a series of treaties. *P. A. U. Press Release*, Aug. 27, 1948. Signed Aug. 10 a charter for a permanent organization. *Venezuela News Letter* (Washington) No. 16, Aug. 15, 1948. Summary of recommendations: *P. A. U. Conf. Summary Series*, No. 1, pp. 1-3.
- 27 TREATIES. U. S. Department of State published collections of Soviet-satellite treaties aimed at Western democracies. *N. Y. T.*, July 28, 1948, p. 2. Texts: *D. & S. P.*, July, 1948, pp. 227-249.
- 28 COSTA RICA. Proclaimed sovereignty over continental shelf and submarine platform within 200 miles of its coasts. *N. Y. T.*, July 29, 1948, p. 8.
- 28 PERU—SPAIN. Peruvian note to United Nations announced diplomatic relations with Spain would be renewed. *N. Y. T.*, July 29, 1948, p. 6.

- 29 IRAN—UNITED STATES. Signed agreement in Washington granting a credit to Iranian Government for purchase of surplus military equipment and the cost of repairs, packing and shipping this equipment to Iran. *D. S. B.*, Aug. 15, 1948, p. 211.
- 30-31 BRAZIL—UNITED STATES. U. S. proclamation July 31 in regard to the General Agreement on Tariffs and Trade of Oct. 30, 1947. *D. S. B.*, Aug. 15, 1948, p. 211.
- 30 DANUBE CONFERENCE. Opened at Belgrade. Background note: *London Times*, July 31, 1948, p. 3.
- 30/August 3 HUNGARY. President Tildy resigned and was succeeded by Arpads Szakasits. *N. Y. T.*, July 31, 1948, p. 1; Aug. 4, p. 1. Members of new Cabinet: *N. Y. T.*, Aug. 6, 1948, p. 6.
- 31 GREAT BRITAIN—IRELAND. Signed trade agreement at Dublin. *N. Y. T.*, Aug. 1, 1948, p. 15; *C. I. E. D.*, July 23/Aug. 5, 1948, p. 516.

UNITED NATIONS AND SPECIALIZED AGENCIES

April, 1947

- 29-August 5, 1948 U. N. TRUSTEESHIP COUNCIL. Text of report of 2d and 3d sessions: *G. A. (III) O. R.*, Supp. No. 4; *U. N. Doc. A/603*.

July, 1947

- 15-May 8, 1948 ECONOMIC COMMISSION FOR EUROPE. Annual report for the period was submitted to 7th session of Economic and Social Council. Text: *U. N. Doc. E/791*.
- 16-July 15, 1948 U. N. SECURITY COUNCIL. Report to General Assembly for the period was approved by Council on Aug. 19, 1948. Text: *U. N. Doc. A/620*; *G. A. (III) O. R.*, Supp. No. 2.

August, 1947

- 20-August 2, 1948 U. N. CONVENTIONAL ARMAMENTS COMMISSION. Text of 1st Progress Report of Working Committee for the period, together with addition to paragraph 1, proposed by U.S.S.R.: *U. N. Doc. S/C. 3/27*.

April, 1948

- 1-June 30 U. N. SECURITY COUNCIL (Trieste). Report of administration of British-American zone of the Free Territory for the period was transmitted to Security Council on Aug. 6. Text: *U. N. Doc. S/953*.
- 15-June 1 ECONOMIC COMMISSION FOR THE MIDDLE EAST. *Ad hoc* Committee on proposed Commission met at Lake Success. Rejected Soviet Union's claim to membership, and approved membership for 11 other countries. Agreed on geographical scope of Commission's work and voted that Commission be established. *N. Y. T.*, May 25, 1948, p. 8; May 26, 1948, p. 12; June 2, 1948, p. 2. Text: *U. N. P. E. EC/48*. Text of report to the Economic and Social Council: *U. N. Doc. E/AC. 26/16*.
- 30 I. R. O.—BRAZIL. Signed agreement on refugee-immigrants in Brazil. I. R. O. Preparatory Commission *Monthly Digest*, May, 1948, p. 18.
- 30-June 23 U. N. SECURITY COUNCIL (Indonesian Question). Second Interim Report of Committee of Good Offices, submitted on May 19. Committee reported on political developments in Madura. Committee reported on Federal Confer-

ence at Bandung between Dutch and Indonesian representatives. Negotiations at Batavia under Committee's auspices were broken off June 16. *London Times*, June 17, 1948, p. 3. Communiqué of June 17 stated U. S. and Australian views. *U. N. P. R. SC/684*. 3d Interim Report submitted. Committee reported June 23 a deadlock in Java. *N. Y. T.*, June 24, 1948, p. 16. Texts: *U. N. Docs. S/786, S/787, S/842, S/848* and Add. 1. Summaries: *U. N. B.*, July 1, 1948, pp. 540-547.

May, 1948

3-14 U. N. GENERAL ASSEMBLY. Great Britain asked to have Palestine placed in "neutral hands." *N. Y. T.*, May 4, 1948, p. 1. Excerpts: p. 18. Decided May 6 to ask Great Britain to appoint a neutral mayor or commissioner for Jerusalem. *N. Y. T.*, May 7, 1948, p. 1. Harold Evans, of Philadelphia, designated May 13 Municipal Commissioner for Jerusalem, subject to formal appointment by British High Commissioner. *N. Y. T.*, May 14, 1948, p. 1; *London Times*, May 14, 1948, p. 4. Text of plan for truce submitted by subcommittee: *N. Y. T.*, May 14, 1948, p. 3. Voted May 14 to send a Mediator to the Holy Land to arrange truce. Session adjourned. *U. N. B.*, June 1, 1948, p. 437. List of resolutions adopted (Apr. 19-May 14): *U. N. Doc. A/INF/20; G. A. (2d special sess.) O. R.*, Supp. No. 2.

3-22 U. N. NARCOTIC DRUGS COMMISSION. Third session held at Lake Success. Provisional agenda: *U. N. Doc. E/CN.7/116*. Adopted May 12 draft protocol bringing narcotic drugs under international control. *N. Y. T.*, May 13, 1948, p. 9. Text: *U. N. Doc. E/798*, pp. 20-23. Adjourned until next May. Brief summary of session: *N. Y. T.*, May 23, 1948, p. 16; *U. N. B.*, June 15, 1948, pp. 495-497. Text of report on session: *U. N. Doc. E/799*.

4-12 I. R. O. Sixth part of 1st session of Preparatory Commission met at Geneva and recessed until Aug. 20. *D. S. B.*, July 13, 1948, p. 83. U. S. delegates: *D. S. B.*, May 4, 1948, p. 580.

4-14 I. C. A. O. Second European-Mediterranean Regional Air Navigation meeting held in Paris. 15 voting and 4 observer states were present. Report on meeting: *D. S. B.*, Aug. 29, 1948, pp. 271-274.

9-29 U. N. SECURITY COUNCIL (Palestine Question). Chairman of Truce Commission reported May 9 and asked Council's opinion on negotiations. Truce Commission authorized May 12 to utilize any available facilities in effecting truce. Egypt announced May 15 invasion of Palestine, and Jewish Agency called on Council for immediate action. Decided May 18 to address questions on armed forces, exercise of political functions, violations of frontiers, to governments of Arab countries, Arab Higher Committee and Jewish authorities in Palestine. Named May 20 Count Folke Bernadotte (Sweden) as Mediator for Palestine. Truce Commission appealed May 21 to Council to send armed force, and rejected U. S. proposal to brand invasion an aggression. Voted May 24 to extend deadline for cease-fire. Adopted May 29 resolution calling for cessation of acts of armed force for 4 weeks. *N. Y. T.*, May 13, 1948, p. 9; May 16, pp. 1, 5; May 21, p. 1; May 22, p. 1, May 23, pp. 1, 4; May 25, p. 1; May 30, p. 3; *London Times*, May 22, p. 4; May 31, p. 4. Texts: *U. N. Docs. S/741, 743, 747, 753, 773, 801, 855* and Adda. 1-3; *U. N. B.*, June 1, p. 439; June 15, p. 475.

6-June 8 U. N. SECURITY COUNCIL (India-Pakistan Question). India notified U. N. it could not accept provisions of resolution calling for a plebiscite in Kashmir,

- but would be willing to discuss the matter with any commission which might arrive. U. S. became 5th member of Commission, joining Argentina, Czechoslovakia, Belgium and Colombia. On June 3, Council voted to direct a 5-nation committee to study and report on rival claims to the State of Junagadh, charges of genocide against India and violation of financial property agreements between India and Pakistan. Text: U. N. Doc. S/819; U. N. P. R. SC/664; U. N. B., June 15, 1948, p. 480. Indian note [no date] objected to resolution. Council decided June 8 not to change its resolution. C. I. E. D., May 7/20, 1948, p. 336; N. Y. T., May 8, 1948, p. 3; June 4, 1948, p. 5; June 9, 1948, p. 6; I. I. S. No. 3704.
- 10-25 U. N. POPULATION COMMISSION. Third session was held at Lake Success. Re-elected officers. U. N. P. R. SOC/518. Provisional agenda: U. N. Doc. E/CN.9/15. Text of report on session: U. N. Doc. E/805. Round-up of session: U. N. P. R. SOC/569.
- 14-15 INTERNATIONAL INSTITUTE OF THE HYLEAN AMAZON. Interim Commission met at Manaus, Brazil, and selected that city as headquarters. Commission will operate until convention of May 10, 1948, enters into force. D. S. B., Aug. 8, 1948, pp. 183-184.
- 16 U. N.—ISRAEL. Israel applied for membership. N. Y. T., May 17, 1948, pp. 1, 6; London Times, May 17, 1948, p. 4.
- 17 U. N. ATOMIC ENERGY COMMISSION. Adopted 8d report which included recommendation to suspend all efforts to agree on world atomic control. N. Y. T., May 18, 1948, p. 8; D. S. B., May 30, 1948, p. 704. Text of report and recommendations: U. N. Doc. AEC/31.
- 17 U. N. PALESTINE COMMISSION. Adjourned *sine die* at its 75th meeting. U. N. B., June 1, 1948, p. 435.
- 18-31 I. C. A. O. Second North Atlantic Regional Air Navigation Meeting held in Paris. 12 voting and 3 observer states were present. Report on meeting: D. S. B., Aug. 29, 1948, pp. 274-277.
- 19 I. L. O.—BURMA. Burma became 56th member. U. N. P. R. ILO/144; U. N. B., June 1, 1948, p. 463.
- 21 I. R. O. U. N. Secretary General submitted to 7th session of Economic and Social Council, a report on progress and prospect of repatriation, resettlement and immigration of refugees and displaced persons. Text: U. N. Doc. E/816 and Add. 1.
- 24/June 22 U. N.—VETO. Russia cast 24th and 25th vetoes against U. N. investigation of Communist coup in Czechoslovakia. N. Y. T., May 25, 1948, p. 1; London Times, May 26, 1948, p. 3; U. N. B., June 15, 1948, p. 505. Russia's 26th veto blocked formal approval of U. S. plan for international atomic control. N. Y. T., June 23, 1948, p. 22.
- 24-June 18 U. N. HUMAN RIGHTS COMMISSION. Held 3d session at Lake Success. Adopted report and draft International Declaration of Human Rights. N. Y. T., June 19, 1948, pp. 1, 4. Texts: U. N. Docs. E/CN.4/148/Add. 1; E/800 and Corr. 1; E. S. C. O. R., 3d yr., 7th sess., Supp. No. 2; U. N. B., July 1, 1948, pp. 522-524.

- 28 I. C. J. Rendered advisory opinion on admission of new members to United Nations. *N. Y. T.*, May 29, 1948, p. 3; *London Times*, May 29, 1948, p. 8. Text: *U. N. P. R.* ICJ/21; *U. N. B.*, July 15, 1948, pp. 492-494; *U. N. Doc.* A/597; *I. C. J. Reports*, 1948, pp. 57-119.
- 31 U. N. TRUSTEESHIP COUNCIL. South Africa sent reply to Council's questionnaire on report to U. N. on administration of South West Africa for the year 1946. *N. Y. T.*, June 5, 1948, pp. 1, 4. Text: *U. N. Doc.* T/175.

June, 1948

1-12 ECONOMIC COMMISSION FOR ASIA AND THE FAR EAST. Third session met at Ootacamund, Madras Province, India, with representatives of 14 member countries, 5 associate member countries and 9 observers. *London Times*, June 2, 1948, p. 3. Provisional agenda: *U. N. Doc.* E/CN.11/77 and Rev. 1. Adopted resolution June 4 for early meeting of inland transport experts of Asian countries. Text of resolution: *I. I. S.* No. 3706. Postponed until next session application of Indonesian Republic for associate membership. *London Times*, June 10, 1948, p. 3; *U. N. B.*, June 15, 1948, p. 504. Session closed June 12. *N. Y. T.*, June 13, 1948, p. 24. Report of session: *U. N. Doc.* E/839.

1-21 I. C. A. O. Second Assembly met at Geneva. *D. S. B.*, May 30, 1948, pp. 703-704. 11 nations signed June 19 convention on recognition of property rights in aircraft. Approved membership applications of Austria and Finland. Adopted resolution directing Council to establish an air navigation commission. *U. N. P. R.* ICAO/63; *N. Y. T.*, June 20, 1948, p. 30; *London Times*, June 23, 1948, p. 3. Short report on session: *U. N. P. R.* ICAO/67. Summary report: *Journal of Air Law and Commerce*, Summer, 1948, pp. 339-343.

1-28 U. N. SECURITY COUNCIL (Palestine Question). Jews and Arabs accepted June 1 pleas for 48-hr. truce. Council asked Mediator June 2 to set effective time for cease-fire. Mediator announced effective date as June 11, 6 A.M. GMT. Both sides accepted cease-fire request June 9. Mediator requested June 9 international patrol squadron from U. S., France and Belgium. U. S. and France announced June 19 immediate availability of 3 U. S. destroyers and 1 French corvette. U. S. reported June 22 steps taken to implement truce. Mediator handed peace proposals to Arabs and Jews June 28. *N. Y. T.*, June 2, 1948, p. 1; June 3, pp. 1, 6; June 9, p. 5; June 10, p. 1; July 5, p. 2; *London Times*, June 10, p. 4; July 5, p. 4. Texts: *U. N. Docs.* S/805, 807, 810, 811, 815, 829, 830, 834, 863; *U. N. B.*, July 15, 1948, p. 562; *U. N. P. R.* PAL/190; *D. S. B.*, June 13, pp. 764-765; June 20, pp. 794-795, 797; July 4, p. 11; July 25, pp. 105-107.

1/July 15 U. N. INTERNATIONAL LAW COMMISSION. U. S. representative to U. N. notified Secretary General Lie that Manley O. Hudson is U. S. national candidate and the non-national candidates are Alberto Ulloa Sotomayor (Peru) and Jean Spyropoulos (Greece). *D. S. B.*, June 6, 1948, p. 732. Secretary General released list of names of nominees. Text: *U. N. Doc.* A/576/Rev. 1.

3 ECONOMIC COMMISSION FOR THE MIDDLE EAST—PAKISTAN. Pakistan applied to Economic and Social Council for membership in Commission. Text: *U. N. Doc.* E/814.

7-25 ECONOMIC COMMISSION FOR LATIN AMERICA. First session met at Santiago, Chile, with 150 delegates from countries of the Western Hemisphere, United Kingdom, France and Netherlands. *U. N. P. R.* EC/510; *U. N. B.*, June 15,

- 1948, p. 469. Provisional agenda: U. N. Doc. E/CN.12/1. Text of report on the session: U. N. Doc. E/840. Summary of decisions reached: *U. N. B.*, July 15, 1948, pp. 572-573.
- 11/22 U. N. SECURITY COUNCIL (Atomic Energy). Philip C. Jessup stated U. S. position. Text, with resolution introduced: *D. S. B.*, June 20, 1948, pp. 798-799. Text of resolution: U. N. Doc. S/836. Russia's veto blocked approval of Atomic Energy Commission's report of May 17, and Council voted to transmit report to General Assembly for consideration. *N. Y. T.*, June 23, 1948, p. 22.
- 11/30 U. N. BALKAN COMMITTEE. Announced Albania's rejection of Committee's proposal to confer on alleged violations of Albanian territory by Greece. Text: *U. N. P. R. BAL/340*. Adopted four observation reports that Albania had been assisting Greek guerrillas. *U. N. B.*, June 15, 1948, p. 486. Signed report to General Assembly. Text: *G. A. (III) O. R.*, Supp. No. 8; *U. N. Doc. A/574*.
- 15 I. L. O.—PHILIPPINE REPUBLIC. Philippine Republic became 57th member by depositing instrument of acceptance. *U. N. P. R. ILO/152*.
- 15 U. N. KASHMIR COMMISSION. Held first meeting at Geneva. Members: *N. Y. T.*, June 16, 1948, p. 15; *U. N. B.*, June 15, 1948, p. 481.
- 16-August 5 U. N. TRUSTEESHIP COUNCIL. Held 3d session at Lake Success. Text of agenda: U. N. Doc. T/169/Rev. 2. Approved on July 13 terms of reference for first periodic visiting mission to trust territories, which will visit Ruanda-Urundi and Tanganyika. Text: U. N. Doc. T/195; *D. S. B.*, Aug. 1, 1948, p. 131. Summary: *U. N. B.*, Aug. 1, 1948, p. 603. Voted July 29 to postpone indefinitely action on international régime in Jerusalem. *N. Y. T.*, July 30, 1948, p. 10. Completed July 30 consideration of petitions on its agenda. *U. N. P. R. TR/216*. Adopted report Aug. 2 on administration of New Guinea which suggested that proposal for combining New Guinea in administrative union with Papua might be submitted to International Court of Justice. *N. Y. T.*, Aug. 3, 1948, p. 3. Text of draft report: U. N. Doc. T/202. Rejected Aug. 4 Russian proposal to make South West Africa a trust territory. *N. Y. T.*, Aug. 5, 1948, p. 13. Accepted after amendment a minority report from Soviet member. Council adjourned after protests about Soviet minority reports on Council's Reports on Administration of New Guinea, Ruanda-Urundi and Tanganyika. *N. Y. T.*, Aug. 6, 1948, p. 9; *D. S. B.*, Aug. 8, 1948, p. 179. Text of Soviet conclusions and proposals: U. N. Docs. T/211, 212 and 214. List of resolutions adopted June 16-Aug. 5: U. N. Doc. T/INF/7. For text of report to General Assembly see U. N. Doc. A/603; *G. A. (III) O. R.*, Supp. No. 4. Index to resolutions of 1st-3d sessions: U. N. Doc. Index Note No. 7, Sept. 18, 1948.
- 17-July 10 INTERNATIONAL LABOR CONFERENCE. 31st conference was held in San Francisco. *D. S. B.*, June 13, 1948, pp. 773-774. Adopted July 6 convention on freedom of association and protection of right to organize. *N. Y. T.*, July 7, 1948, p. 11. Draft text: *N. Y. T.*, July 3, 1948, p. 4. Approved Ceylon's membership application in I. L. O. *U. N. P. R. ILO/160*. El Salvador and Philippine Republic gave notification of acceptance of constitution. *I. L. O. News Service* (Geneva), Sept., 1948. Voted to invite an observer from Japan. *U. N. P. R. ILO/166*. Accepted U. N. convention on privileges and immunities of specialized agencies, as modified by annex relating to I. L. O. *U. N. B.*, Aug. 1, 1948, p. 600. Closed July 10. *N. Y. T.*, July 11, 1948, p. 21. Decisions of the conference: *U. N. B.*, Aug. 1, 1948, pp. 599-600.

24-July 24 W. H. O. First Assembly met at Geneva. Draft rules of procedure: W. H. O. *Doc. A/70*. Burma entered the Organization July 1. *U. N. P. R. H/249*. Voted unanimously July 2 to admit U. S. to membership in spite of U. S. reservation concerning withdrawal. Accepted recommendation to establish permanent home at Geneva. *N. Y. T.*, July 3, 1948, p. 2; *London Times*, July 5, 1948, p. 4. Elected members of Executive Board: *U. N. P. R. H/262*; *H/271*. Voted establishment of 5 regional offices. *U. N. P. R. H/262*. Elected Dr. Brock Chisholm (Canada) Director General of W. H. O. on July 21. *U. N. P. R. H/271* and W. H. O. *Doc. A/VR/15*. U. S. presented view July 22 on scale of contribution. Text: W. H. O. *Doc. A/92*. Approved \$5,000,000 budget. *London Times*, July 26, 1948, p. 3. Summary of resolutions and decisions: W. H. O. *Doc. A/94 Rev. 1*. Final list of documents: W. H. O. *Doc. A/99*.

July, 1948

1 U. N.—U. P. U. Agreement bringing Universal Postal Union into relationship with U. N. came into force. *U. N. Doc. E/977*.

1-29 U. N. SECURITY COUNCIL (Indonesian Question). Indonesian delegate asked U. N. to name a single mediator for the dispute if Committee of Good Offices should be unable to break current deadlock. *N. Y. T.*, July 2, 1948, p. 5. Committee reported July 22 on restriction of Indonesian trade. Dutch Government replied July 28. Texts: *U. N. Docs. S/919* and *926* and Add. 1. Committee reported July 23 a standstill in political negotiations. Text: *U. N. Doc. S/918*. Council voted July 29 to call on the two governments to maintain truce and implement *Renville* principles. Text of resolution: *U. N. Doc. S/933*; *U. N. B.*, Aug. 15, 1948, p. 661.

2 U. N. MILITARY STAFF COMMITTEE. Chairman reported to Security Council that Committee is not in a position to undertake final review of overall strength and composition of armed forces to be made available to Council until agreement has been reached in Council on divergent views given in its report on Apr. 30, 1947. Text: *U. N. Doc. S/879*; *D. S. B.*, Aug. 15, 1948, p. 195.

2 W. H. O.—MONACO. World Health Assembly approved membership application of Monaco. *U. N. P. R. H/248*.

2-27 U. N. SECURITY COUNCIL (Palestine). Arab League rejected peace proposals July 2 and made counterproposals. Israel objected to curtailment of immigration in implementing truce. Truce expired July 9 and war was resumed. Mediator made written and oral reports to Council on July 12 and 13. Council declared July 15 Palestine war a threat to peace and ordered cessation of hostilities. Both sides agreed July 16 to truce in Jerusalem. Mediator asked July 16 U. S., Belgium and France to send 300 observers. Jewish and Arab military leaders signed agreements July 21 defining boundaries during truce. Council rejected July 27 Syrian proposal for advisory ruling by International Court of Justice on U. N. jurisdiction to settle question. *N. Y. T.*, July 3, 1948, pp. 1, 4; July 4, p. 1; July 13, p. 17; July 14, p. 18; July 16, pp. 1, 3; July 17, pp. 1, 4; July 22, p. 16; July 28, p. 1. Texts: *U. N. Docs. S/864*, 888, 902, 903, 906; *D. S. B.*, July 25, 1948, pp. 107-115; Aug. 1, pp. 130, 132-133; Aug. 8, pp. 175-177.

7 I. R. O.—TURKEY. Announced agreement covering resettlement in Turkey of refugees and displaced persons. *U. N. P. R. IRO/77*.

- 7-August 5 U. N. GENERAL ASSEMBLY, INTERIM COMMITTEE. Voted to ask elimination of "double veto" in Security Council. *N. Y. T.*, July 8, 1948, p. 4. Text of recommendation as embodied in report to General Assembly: *U. N. Doc. A/578*, p. 13; *D. & S. P.*, Aug., 1948, pp. 340-356, 360. Summary: *U. N. B.*, Aug. 1, 1948, pp. 610-612. Approved July 26 unanimously report of Subcommittee 2 on methods for promotion of coöperation in political field. *U. N. P. R. I/COM/94*. Text of Subcommittee's report: *U. N. Doc. A/AC.18/73* and Add. 1. Approved resolution to restore efficacy of General Act of 1928 for Pacific Settlement of Disputes. *U. N. P. R. I/COM/93*; *U. N. B.*, Aug. 15, 1948, p. 628. Adjourned Aug. 5 after unanimously agreeing that Committee should be continued by General Assembly. *N. Y. T.*, Aug. 6, 1948, p. 10; *U. N. B.*, Aug. 15, 1948, p. 629.
- 10 U. N.—W. H. O. Draft agreement bringing W. H. O. into relationship with U. N. came into force. *U. N. Doc. E/891*.
- 17 U. N.—INDIA. India asked that its complaint about mistreatment of Indians in South Africa be placed on agenda of General Assembly. *N. Y. T.*, July 18, 1948, p. 33.
- 19/21 U. N. ECONOMIC AND SOCIAL COUNCIL. Seventh session opened at Geneva July 19. *N. Y. T.*, July 20, 1948, p. 10. Annotated provisional agenda: *U. N. B.*, July 15, 1948, pp. 578-579. Voted to establish a plenary committee on human rights. *U. N. P. R. ECOSOC/286*.
- 20/23 I. C. E. F. Executive Board approved extension of limited aid to a selected group of German children. Adopted 78-million-dollar budget for 1949. *N. Y. T.*, July 21, 1948, p. 11; July 24, 1948, p. 3. Text of report: *U. N. Doc. E/901*.
- 21 U. N.—I. R. O. Committees concluded draft agreement subject to approval by Economic and Social Council and I. R. O. General Council when established. Text: *U. N. Docs. E/C.1/38* and *E/1063*.
- 23 GERMAN PROPERTY. Switzerland turned over to I. R. O. 20,000,000 Swiss francs as an advance against proceeds of liquidation of German property in Switzerland, in accordance with 1946 agreement. *N. Y. T.*, July 24, 1948, p. 3.
- 26 U. N. CONVENTIONAL ARMAMENTS COMMISSION. Adopted resolution outlining conditions under which effective regulation and reduction of arms are possible. Text: *U. N. Doc. S/C.3/25*.
- 28-August 10 U. N. SECURITY COUNCIL (Trieste). Yugoslavia protested to Council against U. S. and British campaign to give Trieste back to Italy. *N. Y. T.*, July 29, 1948, p. 1. Text: *U. N. Doc. S/927*; *D. S. B.*, Aug. 23, 1948, pp. 233-235. U. S. delegate replied. Text: *D. S. B.*, Aug. 22, 1948, pp. 225-233; *U. N. B.*, Sept. 1, 1948, pp. 687-688.
- 30 U. N. INDONESIAN COMMITTEE. Committee of Good Offices adopted its 2d report to Security Council on political developments in western Java. Text: *U. N. Doc. S/960*.

MULTIPARTITE CONVENTIONS

AIR SERVICES TRANSIT AGREEMENT. Chicago, Dec. 7, 1944.

Status June 15, 1948: *U. S. Aviation Repts.*, June, 1948, pp. xiii-xvii.

AIR TRANSPORT AGREEMENT. Chicago, Dec. 7, 1944.

Status June 15, 1948: *U. S. Aviation Repts.*, June, 1948, pp. xiii-xvii.

AIRCRAFT PROPERTY RIGHTS. Geneva, June 19, 1948.

Signatures:

United States, Great Britain, Argentina, Belgium, Brazil, China, France, Portugal, Netherlands, Iceland and Peru. *N. Y. T.*, June 20, 1948, p. 30.

AMERICAN STATES, ORGANIZATION OF. Charter. Bogotá, April 30, 1948.

Text: Department of State [*Press Release*], May 18, 1948, No. 389.

AVIATION. INTERIM AGREEMENT. Chicago, Dec. 7, 1944.

Status June 15, 1948: *U. S. Aviation Repts.*, June, 1948, pp. xiii-xvii.

AVIATION CONVENTION [I. C. A. O. Constitution]. Chicago, Dec. 7, 1944.

Status June 15, 1948: *U. S. Aviation Repts.*, June, 1948, pp. xiii-xvii.

GERMAN PROPERTY. Brussels, Dec. 5, 1947.

Signature:

Luxembourg. June 4, 1948. *D. S. B.*, July 4, 1948, p. 25.

GERMAN PROPERTY. Madrid, May 10, 1948.

Signatures:

United States, Great Britain, France, Spain. *N. Y. T.*, May 11, 1948, p. 21.

HEALTH ORGANIZATION. Constitution. New York, July 22, 1946.

Ratifications deposited:

Belgium. June 25, 1948.

Brazil. June 2, 1948.

Bulgaria. June 9, 1948.

Dominican Republic. June 21, 1948.

El Salvador. June 23, 1948.

France. June 16, 1948.

Hungary. June 17, 1948.

Iceland. June 17, 1948.

Pakistan. June 23, 1948.

Rumania. June 8, 1948 (non-member).

United States (with reservation). June 21, 1948.

U. N. Treaties & International Agreements Registered, June, 1948, p. 26.

Burma. July 1, 1948. *U. N. P. R. H/249*.

Ceylon. July 12, 1948. *U. N. P. R. H/261*.

Philippine Republic. July 9, 1948. *U. N. P. R. H/258*.

Poland. May 7, 1948. *N. Y. T.*, May 8, 1948, p. 5.

Venezuela. July 7, 1948. *U. N. P. R. H/253*.

INTER-AMERICAN RECIPROCAL ASSISTANCE. Rio de Janeiro, Sept. 2, 1947.

Ratifications deposited:

Brazil. March 25, 1948.

Haiti. March 25, 1948.

Paraguay. July 22, 1948. *P. A. U. Press Release*, July 28, 1948.

INTERNATIONAL COURT OF JUSTICE. Statute. Optional Clause. San Francisco, June 26, 1945.

Ratification deposited:

Switzerland. July 28, 1948. *U. N. Doc. S/947*.

TRADE AND TARIFFS. Protocol. Geneva, Oct. 30, 1947.

Signatures:

Brazil. July 30, 1948. *D. S. B.*, Aug. 15, 1948, p. 211.

India. June 8, 1948. *U. N. P. R.* ITO/129.

Norway. June 10, 1948. *U. N. P. R.* ITO/130.

South Africa. May 14, 1948. *D. S. B.*, June 27, 1948, p. 840.

Sweden. June 11, 1948. *U. N. P. R.* ITO/130.

Status, July 1, 1948: *D. S. B.*, July 11, 1948, p. 55.

PRIVILEGES AND IMMUNITIES, UNITED NATIONS. London, Feb. 13, 1946.

Accession deposited:

Denmark. June 10, 1948. *U. N. P. R.* L/39.

Ratification deposited:

Netherlands. April 19, 1948. *U. N. Treaties and International Agreements Registered*, April, 1948, p. 14.

OBSCENE PUBLICATIONS. Geneva, Sept. 12, 1923. Protocol of Amendment. Lake Success, Nov. 12, 1947.

Text: *U. N. Publication*: 1948.IV.5.

PUBLIC HEALTH OFFICE. Protocol. New York, July 22, 1946.

Ratifications deposited:

Afghanistan. April 19, 1948.

U. N. Treaties and International Agreements Registered, April 1948, p. 14.

Belgium. June 25, 1948.

Brazil. June 2, 1948.

Hungary. June 17, 1948.

Pakistan. June 23, 1948.

U. N. Treaties and International Agreements Registered, June, 1948, p. 24.

SUGAR PRODUCTION AND MARKETING. Protocol. London, Aug. 29, 1947.

Promulgation:

United States. June 1, 1948. *D. S. B.*, June 20, 1948, p. 815.

TELECOMMUNICATIONS. Atlantic City, Oct. 2, 1947.

Ratification:

United States. June 19, 1948. *N. Y. T.*, June 20, 1948, p. 3; *D. S. B.*, June 27, 1948, p. 841.

Upon entry into force the Convention with Final Protocol and Radio Regulations annexed thereto will abrogate and replace between the contracting governments, the International Telecommunication Convention, Madrid, Dec. 9, 1932, and the Cairo revision of the General Radio Regulations of April 8, 1938. It will enter into force Jan. 1, 1949, between those countries, territories or groups of territories in respect of which instruments of ratification or accession have been deposited by that date.

TRADE ORGANIZATION. Charter. Havana, March 24, 1948.

• Signature:

Turkey. July 26, 1948. *I.C.I.T.O. Doc. ICITO/INF/5*.

WHEAT AGREEMENT. Washington, March 6, 1948.

Withdrawal:

Great Britain. *London Times*, July 9, 1948, p. 3.

Signatories abandoned the agreement, following U. S. failure to ratify.

Signatures and ratifications as of July 6, 1948: *U. N. P. E.* FAO/285.

WHITE SLAVE TRADE. Geneva, Sept. 30, 1921 and Oct. 11, 1933. Protocol of Amendment. *Lake Success*, Nov. 12, 1947.

Text: *U. N. Publication*: 1948.IV.4.

WHITE SLAVE TRADE (Women of Full Age). Geneva, Oct. 11, 1933. Protocol of Amendment. *Lake Success*, Nov. 12, 1947.

Text: *U. N. Publication*: 1948.IV.3.

DOROTHY R. DART

JUDICIAL DECISIONS

TEXTS AND DIGESTS*

BY WILLIAM W. BISHOP, JR.

Of the Board of Editors

United Nations membership.

CONDITIONS OF ADMISSION OF A STATE TO MEMBERSHIP IN THE UNITED NATIONS.¹

International Court of Justice, Advisory Opinion, May 28, 1948.

On November 17th, 1947, the General Assembly of the United Nations adopted the following Resolution:

The General Assembly,

Considering Article 4 of the Charter of the United Nations,

Considering the exchange of views which has taken place in the Security Council at its Two hundred and fourth, Two hundred and fifth and Two hundred and sixth Meetings, relating to the admission of certain States to membership in the United Nations,

Considering Article 96 of the Charter,

Requests the International Court of Justice to give an advisory opinion on the following question:

Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?

Instructs the Secretary-General to place at the disposal of the Court the records of the above-mentioned meetings of the Security Council.

By a note dated November 24th, 1947, and filed in the Registry on November 29th, the Secretary-General of the United Nations transmitted to the Registrar a copy of the Resolution of the General Assembly. In a

* Arranged by courts in the following order: International Court of Justice; U. S. Supreme Court; U. S. Circuit Courts of Appeals; U. S. District Courts; other Federal courts; State courts arranged alphabetically by States; British courts; Canadian courts. Within each group the entries are arranged chronologically.

¹ Full text of opinion of the court.

telegram sent on December 10th, the Secretary-General informed the Registrar that the note of November 24th was to be regarded as the official notification and that certified true copies of the Resolution had been despatched. These copies reached the Registry on December 12th, and the question was then entered in the General List under No. 3.

The same day, the Registrar gave notice of the request for an opinion to all States entitled to appear before the Court, in accordance with paragraph 1 of Article 66 of the Statute. Furthermore, as the question put mentioned Article 4 of the Charter, the Registrar informed the Governments of Members of the United Nations, by means of a special and direct communication as provided in paragraph 2 of Article 66, that the Court was prepared to receive from them written statements on the question before February 9th, 1948, the date fixed by an Order made on December 12th, 1947, by the President, as the Court was not sitting.

By the date thus fixed, written statements were received from the following States: China, El Salvador, Guatemala, Honduras, India, Canada, United States of America, Greece, Yugoslavia, Belgium, Iraq, Ukraine, Union of Soviet Socialist Republics, and Australia. These statements were communicated to all Members of the United Nations, who were informed that the President had fixed April 15th, 1948, as the opening date of the oral proceedings. A statement from the Government of Siam, dated January 30th, 1948, which was received in the Registry on February 14th, i.e., after the expiration of the time-limit, was accepted by decision of the President and was also transmitted to the other Members of the United Nations.

By its Resolution the General Assembly instructed the Secretary-General to place at the disposal of the Court the records of certain meetings of the Security Council. In accordance with these instructions and with paragraph 2 of Article 65 of the Statute, where it is laid down that every question submitted for an opinion shall be accompanied by all documents likely to throw light upon it, the Secretary-General sent to the Registry the documents which are enumerated in Section I of the list annexed to the present opinion.² A part of these documents reached the Registry on February 10th, 1948, and the remainder on March 20th. The Secretary-General also announced by a letter of February 12th, 1948, that he had designated a representative, authorized to present any written and oral statements which might facilitate the Court's task.

Furthermore, the Governments of the French Republic, of the Federal People's Republic of Yugoslavia, of the Kingdom of Belgium, of the Czechoslovak Republic, and of the Republic of Poland announced that they had designated representatives to present oral statements before the Court.

By decision of the Court, the opening of the oral proceedings was postponed from April 15th to April 22nd, 1948. In the course of public

² List omitted.

sittings held on April 22nd, 23rd, and 24th, the Court heard the oral statements presented

—on behalf of the Secretary-General of the United Nations, by its representative, Mr. Ivan Kerno, Assistant Secretary-General in charge of the Legal Department;

—on behalf of the Government of the French Republic, by its representative, M. Georges Scelle, Professor at the Faculty of Law of Paris;

—on behalf of the Government of the Federal People's Republic of Yugoslavia, by its representative, Mr. Milan Bartoš, Minister Plenipotentiary;

—on behalf of the Government of the Kingdom of Belgium, by its representative, M. Georges Kaeckenbeeck, D.C.L., Minister Plenipotentiary, Head of the Division for Peace Conferences and International Organization at the Ministry for Foreign Affairs, Member of the Permanent Court of Arbitration;

—on behalf of the Government of the Republic of Czechoslovakia, by its representative, Mr. Vladimír Vochoč, Professor of International Law in Charles University at Prague;

—on behalf of the Government of the Republic of Poland, by its representative, Mr. Manfred Lachs, *Professeur agrégé* of International Law at the University of Warsaw.

In the course of the hearings, new documents were filed by the representatives accredited to the Court. These documents are enumerated in Section II of the list annexed to the present opinion.³

Before examining the request for an opinion, the Court considers it necessary to make the following preliminary remarks:

The question put to the Court is divided into two parts, of which the second begins with the words "In particular", and is presented as an application of a more general idea implicit in the first.

The request for an opinion does not refer to the actual vote. Although the Members are bound to conform to the requirements of Article 4 in giving their votes, the General Assembly can hardly be supposed to have intended to ask the Court's opinion as to the reasons which, in the mind of a Member, may prompt its vote. Such reasons, which enter into a mental process, are obviously subject to no control. Nor does the request concern a Member's freedom of expressing its opinion. Since it concerns a condition or conditions on which a Member "makes its consent dependent", the question can only relate to the statements made by a Member concerning the vote it proposes to give.

It is clear from the General Assembly's Resolution of November 17th, 1947, that the Court is not called upon either to define the meaning and scope of the conditions on which admission is made dependent, or to specify

³ List omitted.

the elements which may serve in a concrete case to verify the existence of the requisite conditions.

The clause of the General Assembly's Resolution, referring to "the exchange of views which has taken place . . .", is not understood as an invitation to the Court to say whether the views thus referred to are well founded or otherwise. The abstract form in which the question is stated precludes such an interpretation.

The question put is in effect confined to the following point only: are the conditions stated in paragraph 1 of Article 4 exhaustive in character in the sense that an affirmative reply would lead to the conclusion that a Member is not legally entitled to make admission dependent on conditions not expressly provided for in that Article, while a negative reply would, on the contrary, authorize a Member to make admission dependent also on other conditions.

Understood in this light, the question, in its two parts, is and can only be a purely legal one. To determine the meaning of a treaty provision—to determine, as in this case, the character (exhaustive or otherwise) of the conditions for admission stated therein—is a problem of interpretation and consequently a legal question.

It has nevertheless been contended that the question put must be regarded as a political one and that, for this reason, it falls outside the jurisdiction of the Court. The Court cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision. It is not concerned with the motives which may have inspired this request, nor with the considerations which, in the concrete cases submitted for examination to the Security Council, formed the subject of the exchange of views which took place in that body. It is the duty of the Court to envisage the question submitted to it only in the abstract form which has been given to it; nothing which is said in the present opinion refers, either directly or indirectly, to concrete cases or to particular circumstances.

It has also been contended that the Court should not deal with a question couched in abstract terms. That is a mere affirmation devoid of any justification. According to Article 96 of the Charter and Article 65 of the Statute, the Court may give an advisory opinion on any legal question, abstract or otherwise.

Lastly, it has also been maintained that the Court cannot reply to the question put because it involves an interpretation of the Charter. Nowhere is any provision to be found forbidding the Court, "the principal judicial organ of the United Nations", to exercise in regard to Article 4 of the Charter, a multilateral treaty, an interpretative function which falls within the normal exercise of its judicial powers. •

Accordingly, the Court holds that it is competent, on the basis of Article

96 of the Charter and Article 65 of the Statute, and considers that there are no reasons why it should decline to answer the question put to it.

In framing this answer, it is necessary first to recall the "conditions" required, under paragraph 1 of Article 4, of an applicant for admission. This provision reads as follows:

Membership in the United Nations is open to all other peace-loving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

The requisite conditions are five in number: to be admitted to membership in the United Nations, an applicant must (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so.

All these conditions are subject to the judgment of the Organization. The judgment of the Organization means the judgment of the two organs mentioned in paragraph 2 of Article 4, and, in the last analysis, that of its Members. The question put is concerned with the individual attitude of each Member called upon to pronounce itself on the question of admission.

Having been asked to determine the character, exhaustive or otherwise, of the conditions stated in Article 4, the Court must in the first place consider the text of that Article. The English and French texts of paragraph 1 of Article 4 have the same meaning, and it is impossible to find any conflict between them. The text of this paragraph, by the enumeration which it contains and the choice of its terms, clearly demonstrates the intention of its authors to establish a legal rule which, while it fixes the conditions of admission, determines also the reasons for which admission may be refused; for the text does not differentiate between these two cases and any attempt to restrict it to one of them would be purely arbitrary.

The terms "Membership in the United Nations is open to all other peace-loving States which . . ." and "*Peuvent devenir Membres des Nations unies tous autres États pacifiques*", indicate that States which fulfil the conditions stated have the qualifications requisite for admission. The natural meaning of the words used leads to the conclusion that these conditions constitute an exhaustive enumeration and are not merely stated by way of guidance or example. The provision would lose its significance and weight, if other conditions unconnected with those laid down, could be demanded. The conditions stated in paragraph 1 of Article 4 must therefore be regarded not merely as the necessary conditions, but also as the conditions which suffice.

Nor can it be argued that the conditions enumerated represent only an indispensable minimum, in the sense that political considerations could be superimposed upon them, and prevent the admission of an applicant which

- fulfils them. Such an interpretation would be inconsistent with the terms of paragraph 2 of Article 4, which provide for the admission of "tout

État remplissant ces conditions”—“and *such* State”. It would lead to conferring upon Members an indefinite and practically unlimited power of discretion in the imposition of new conditions. Such a power would be inconsistent with the very character of paragraph 1 of Article 4 which, by reason of the close connexion which it establishes between membership and the observance of the principles and obligations of the Charter, clearly constitutes a legal regulation of the question of the admission of new States. To warrant an interpretation other than that which ensues from the natural meaning of the words, a decisive reason would be required which has not been established.

Moreover, the spirit as well as the terms of the paragraph preclude the idea that considerations extraneous to these principles and obligations can prevent the admission of a State which complies with them. If the authors of the Charter had meant to leave Members free to import into the application of this provision considerations extraneous to the conditions laid down therein, they would undoubtedly have adopted a different wording.

The Court considers that the text is sufficiently clear; consequently, it does not feel that it should deviate from the consistent practice of the Permanent Court of International Justice, according to which there is no occasion to resort to preparatory work if the text of a convention is sufficiently clear in itself.

The Court furthermore observes that Rule 60 of the Provisional Rules of Procedure of the Security Council is based on this interpretation. The first paragraph of this Rule reads as follows:

The Security Council shall decide whether in its judgment the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter, and accordingly whether to recommend the applicant State for membership.

It does not, however, follow from the exhaustive character of paragraph 1 of Article 4 that an appreciation is precluded of such circumstances of fact as would enable the existence of the requisite conditions to be verified.

Article 4 does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down in that Article. The taking into account of such factors is implied in the very wide and very elastic nature of the prescribed conditions; no relevant political factor—that is to say, none connected with the conditions of admission—is excluded.

It has been sought to deduce either from the second paragraph of Article 4, or from the political character of the organ recommending or deciding upon admission, arguments in favour of an interpretation of paragraph 1 of Article 4, to the effect that the fulfilment of the conditions provided for in that Article is necessary before the admission of a State can be recommended or decided upon, but that it does not preclude the Members of the

Organization from advancing considerations of political expediency, extraneous to the conditions of Article 4.

But paragraph 2 is concerned only with the procedure for admission, while the preceding paragraph lays down the substantive law. This procedural character is clearly indicated by the words "will be effected", which, by linking admission to the decision, point clearly to the fact that the paragraph is solely concerned with the manner in which admission is effected, and not with the subject of the judgment of the Organization, nor with the nature of the appreciation involved in that judgment, these two questions being dealt with in the preceding paragraph. Moreover, this paragraph, in referring to the "recommendation" of the Security Council and the "decision" of the General Assembly, is designed only to determine the respective functions of these two organs which consist in pronouncing upon the question whether or not the applicant State shall be admitted to membership after having established whether or not the prescribed conditions are fulfilled.

The political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution. In this case, the limits of this freedom are fixed by Article 4 and allow for a wide liberty of appreciation. There is therefore no conflict between the functions of the political organs, on the one hand, and the exhaustive character of the prescribed conditions, on the other.

It has been sought to base on the political responsibilities assumed by the Security Council, in virtue of Article 24 of the Charter, an argument justifying the necessity for according to the Security Council as well as to the General Assembly complete freedom of appreciation in connexion with the admission of new Members. But Article 24, owing to the very general nature of its terms, cannot, in the absence of any provision, affect the special rules for admission which emerge from Article 4.

The foregoing considerations establish the exhaustive character of the conditions prescribed in Article 4.

The second part of the question concerns a demand on the part of a Member making its consent to the admission of an applicant dependent on the admission of other applicants.

Judged on the basis of the rule which the Court adopts in its interpretation of Article 4, such a demand clearly constitutes a new condition, since it is entirely unconnected with those prescribed in Article 4. It is also in an entirely different category from those conditions, since it makes admission dependent, not on the conditions required of applicants, qualifications which are supposed to be fulfilled, but on an extraneous consideration concerning States other than the applicant State.

The provisions of Article 4 necessarily imply that every application for admission should be examined and voted on separately and on its own merits; otherwise it would be impossible to determine whether a particular applicant fulfils the necessary conditions. To subject an affirmative vote for the admission of an applicant State to the condition that other States be admitted with that State would prevent Members from exercising their judgment in each case with complete liberty, within the scope of the prescribed conditions. Such a demand is incompatible with the letter and spirit of Article 4 of the Charter.

FOR THESE REASONS,
THE COURT,
by nine votes to six,

is of opinion that a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article;

and that, in particular, a Member of the Organization cannot, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State.

The present opinion has been drawn up in French and in English, the French text being authoritative.

* * *

Judges Alvarez and Azevedo submitted concurring opinions. Judges Basdevant, Winiarski, McNair and Read submitted a joint dissenting opinion, and Judges Krylov and Zoričić submitted separate dissenting opinions.

Aliens—commercial fishing—nondiscrimination.

TAKAHASHI v. FISH AND GAME COMMISSION. 334 U. S. 410.

United States Supreme Court, June 7, 1948. Black, A. J.

A Japanese national who came to the United States in 1907 and who from 1915 to 1942 fished in ocean waters off California, both inside and outside the three-mile limit, under annual licenses issued by California, brought an action for mandamus in 1945 to compel the defendant Commission to issue him a license. In 1943 the California statutes had been amended to prohibit the issuance of a license to any "alien Japanese"; in 1945 this was changed to prohibit issuing a license to any "person ineligible to citizenship," which included Japanese nationals. The Superior Court of

Los Angeles County granted the petition for mandamus, holding that aliens ineligible to citizenship were entitled to engage in commercial fishing on the high seas beyond the three-mile limit on the same terms as other lawful inhabitants of the State. The Supreme Court of California reversed this decision.¹ On certiorari, the judgment of the Supreme Court of California was reversed and plaintiff held entitled to engage in commercial fishing.

Delivering the opinion of the Court, Justice Black regarded the case as covered by the principles of *Truax v. Raich*, 239 U. S. 33 (1915), despite the fact that in the *Truax* case the Court noted that it had sustained discriminatory state legislation when such laws were necessary to protect special interests of the state or of its citizens as such. He said:

California now urges, and the State Supreme Court held, that the California fishing provision here challenged falls within the rationale of the "special public interest" cases distinguished in the *Truax* opinion. . . . The contention is this: California owns the fish within three miles of its coast as a trustee for all California citizens as distinguished from its non-citizen inhabitants; as such trustee-owner, it has complete power to bar any or all aliens from fishing in the three-mile belt as a means of conserving the supply of fish; since migratory fish caught while swimming in the three-mile belt are indistinguishable from those caught while swimming in the adjacent high seas, the state, in order to enforce its three-mile control, can also regulate the catching and delivery to its coast of fish caught beyond the three-mile belt under this Court's decision in *Bayside Fish Co. v. Gentry*, 297 U. S. 422. Its law denying fishing licenses to aliens ineligible for citizenship, so the state's contention goes, tends to reduce the number of commercial fishermen and therefore is a proper fish conservation measure; in the exercise of its power to decide what groups will be denied licenses, the state has a right, if not a duty, to bar first of all aliens, who have no community interest in the fish owned by the state. Finally, the legislature's denial of licenses to those aliens who are "ineligible to citizenship" is defended as a reasonable classification, on the ground that California has simply followed the Federal Government's lead in adopting that classification from the naturalization laws.

First. The State's contention that its law was passed solely as a fish conservation measure is vigorously denied. . . . We find it unnecessary to resolve this controversy concerning the motives that prompted enactment of the legislation.² Accordingly, for purposes of our decision we may assume that the code provision was passed to conserve fish in the California coastal waters, or to protect California citizens engaged in commercial fishing from competition by Japanese aliens, or for both reasons.

¹ 30 Cal. (2d) 719, 185 P. (2d) 805; this JOURNAL, Vol. 42 (1948), p. 498.

² In a concurring opinion joined in by Justice Rutledge, Justice Murphy insisted that the legislation was designed solely to discriminate against the Japanese and thus was clearly unconstitutional because "inconsistent with the concept of equal protection of the laws."

Second. It does not follow, as California seems to argue, that because the United States regulates immigration and naturalization in part on the basis of race and color classifications, a state can adopt one or more of the same classifications to prevent lawfully admitted aliens within its borders from earning a living in the same way that other state inhabitants earn their living. The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. . . . Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid. . . . The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide "in any state" on an equality of legal privileges with all citizens under non-discriminatory laws.

All of the foregoing emphasizes the tenuousness of the state's claim that it has power to single out and ban its lawful alien inhabitants, and particularly certain racial and color groups within this class of inhabitants, from following a vocation simply because Congress has put some such groups in special classifications in exercise of its broad and wholly distinguishable powers over immigration and naturalization. The state's law here cannot be supported in the employment of this legislative authority because of policies adopted by Congress in the exercise of its power to treat separately and differently with aliens from countries composed of peoples of many diverse cultures, races, and colors. For these reasons the power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.

Third. We are unable to find that the "special public interest" on which California relies provides support for this state ban on Takahashi's commercial fishing. . . . It is true that this Court did long ago say that the citizens of a state collectively own "the tide-waters . . . and the fish in them, so far as they are capable of ownership while running." *McCready v. Virginia*, 94 U. S. 391, 394. Cf. *United States v. California*, 332 U. S. 19, 38;³ *Toomer v. Witsell, ante*, p. 385.⁴ The *McCready* case upheld a Virginia law which prohibited citizens of other states from planting oysters in a Virginia tidewater river. Though the *McCready* case has been often distinguished, its rationale has been relied on in other cases, including *Geer v. Connecticut*, 161 U. S. 519. That decision, where only the commerce clause was involved, sustained a state law that, in order to restrict the

³ This JOURNAL, Vol. 42 (1948), p. 209.

⁴ 334 U. S. 385 (June 7, 1948), dealing with South Carolina attempts to control shrimp fishing in the three-mile belt off that state, in a fashion held to discriminate against non-residents of the state, in violation of the "privileges and immunities" clause of the Constitution.

use of game to the people of the state, prohibited the out-of-state transportation of game killed within the state. On the other hand, where Louisiana laws declared that the state owned all shrimp within the waters of the state, but permitted ultimate sale and shipment of shrimp for consumption outside that state's boundaries, Louisiana was denied power under the commerce clause to require the local processing of shrimp taken from Louisiana marshes as a prerequisite to out-of-state transportation. *Foster Packing Co. v. Haydel*, 278 U. S. 1. In the absence of overriding federal treaties, this Court sustained a state law barring aliens from hunting wild game in the interest of conserving game for citizens of the state against due process and equal protection challenges. *Patson v. Pennsylvania*, 232 U. S. 138. Later, however, the Federal Migratory Bird Treaty Act of 1918, 40 Stat. 755, was sustained as within federal power despite the claim of Missouri of ownership of birds within its boundaries based on prior statements as to state ownership of game and fish in the *Geer* case. *Missouri v. Holland*, 252 U. S. 416. . . . To whatever extent the fish in the three-mile belt off California may be "capable of ownership" by California, we think that "ownership" is inadequate to justify California in excluding any or all aliens who are lawful residents of the state from making a living by fishing in the ocean off its shores while permitting all others to do so.

This leaves for consideration the argument that this law should be upheld on authority of those cases which have sustained state laws barring aliens ineligible to citizenship from land ownership. Assuming the continued validity of those cases, we think they could not in any event be controlling here. They rested solely upon the power of states to control the devolution and ownership of land within their borders, a power long exercised and supported on reasons peculiar to real property. They cannot be extended to cover this case.

Justices Reed and Jackson joined in a dissenting opinion.

Enemy aliens—removal—duration of war power.

LUDEKE v. WATKINS. 335 U. S. 160.

United States Supreme Court, June 21, 1948. Frankfurter, J.

A German national was arrested December 8, 1941 and interned as an alien enemy. Pursuant to the President's direction of July 14, 1945 that all alien enemies be removed from the United States "who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States," his removal was ordered by the Attorney General on January 18, 1946. Denial by the District Court of a writ of habeas corpus was affirmed, 163 F. (2d) 143. On certiorari, this decision was affirmed by the Supreme Court, despite the contentions that there should be judicial review and that the removal was not authorized after the cessation of hostilities.

Discussing the President's powers under the Alien Enemy Act of 1798, Justice Frankfurter said:

As Congress explicitly recognized in the recent Administrative Procedure Act, some statutes "preclude judicial review." . . . Barring

questions of interpretation and constitutionality, the Alien Enemy Act of 1798 is such a statute. Its terms, purposes, and construction leave no doubt. . . . That such was the scope of the Act is established by controlling contemporaneous construction. . . . The very nature of the President's power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of his discretion.

With respect to the contention that the President's power of removal did not survive the cessation of actual hostilities, he said:

This claim in effect nullifies the power to deport alien enemies, for such deportations are hardly practicable during the pendency of what is colloquially known as the shooting war. . . . War does not cease with a cease-fire order, and power to be exercised by the President such as that conferred by the Act of 1798 is a process which begins when war is declared but is not exhausted when the shooting stops. . . . "The state of war" may be terminated by treaty or legislation or Presidential proclamation. Whatever the mode, its termination is a political act. . . . Whether and when it would be open to this Court to find that a war though merely formally kept alive had in fact ended, is a question too fraught with gravity even to be adequately formulated when not compelled. Only a few months ago the Court rejected the contention that the state of war in relation to which the President has exercised the authority now challenged was terminated. *Woods v. Miller Co.*, 333 U. S. 138. Nothing that has happened since calls for a qualification of that view.

Justices Black, Douglas, Murphy and Rutledge dissented.

Naturalization—"attached to principles of Constitution."

STASIUSKEVICH v. NICOLLS. 168 F. (2d) 474.

U. S. Circuit Ct. App., First Circuit, May 27, 1948. Magruder, C. J.

Petitioner came to the United States from Poland in 1906 and thereafter resided in. Maynard, Massachusetts, where he became a member of the International Workers Order. He petitioned for naturalization, taking the required oath of allegiance and offering the required two witnesses to testify that he was of good moral character and attached to the principles of the Constitution. He denied being a member of the Communist Party or advocating sabotage, etc. The only opposing witness was an immigration inspector who testified that petitioner had the "reputation in the community" of being a Communist. There were also introduced reports of a special Congressional Committee and of a special legislative commission of Massachusetts dealing with Communist, Fascist and other subversive activities. Without making any findings of fact, the U. S. District Court for the District of Massachusetts denied the application for naturalization, saying: "The burden is on the plaintiff to show that he is attached to the principles. I will rule that the man has not sustained the burden of proving his attachment." The order was vacated and the

case remanded to the District Court for further proceedings not inconsistent with the opinion of the Circuit Court of Appeals.

Judge Magruder pointed to the right to appellate review of a denial of naturalization, saying that this right "would be in large measure an empty one if the appellate court had necessarily to accept an ultimate finding or conclusion of the naturalization court that petitioner had failed to sustain the burden of establishing his attachment to the principles of the Constitution. Of course the appellate court is not so bound." He added:

The court has made no finding that the International Workers Order is an organization which believes in, advises, advocates or teaches the overthrow by force or violence of the government of the United States; with such a finding, membership in the organization would be an independent ground of ineligibility for naturalization under § 305 (b) of the Nationality Act. . . . In the absence of such a finding, to deny naturalization merely because of Stasiukevich's membership in the International Workers Order would be erroneous as in effect adding a condition on eligibility to naturalization not found in the statute. . . . A finding that Stasiukevich was a Communist would have been clearly erroneous on this record. . . .

On the issue whether a petitioner for naturalization is attached to the principles of the Constitution, it may be relevant to inquire into the character, program, literature and activities of an organization with which petitioner has long been actively identified. In determining the weight to be attached to such evidence, it is important to bear in mind "that under our traditions beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles." *Schneiderman v. United States* . . . 320 U. S. at page 136. . . . Nevertheless, if the organization has conspicuously supported a program and ideology hostile to the principles of the Constitution, it may be rational to infer that the petitioner shares the major beliefs of the organization to which he continues to adhere. The strength of this inference will naturally vary greatly with the facts of the particular case.

In discussing the meaning of "principles of the Constitution" within the Nationality Act, Judge Magruder said that "the courts have generally shied off from concrete definition." With respect to *Schneiderman v. United States*, 320 U. S. 118, he said:

The court did indicate that one might be attached to the principles of the Constitution, within the statutory meaning, notwithstanding his belief that many changes should be made in it. . . . The phrase goes back to the naturalization act of January 29, 1795, 1 Stat. 414. It is hardly to be supposed that the members of Congress of that day, having so recently completed a successful revolution, conceived that the phrase "the principles of the Constitution" comprehended only one principle, namely, that changes in the basic law must be effectuated only by the procedure laid down in Article V. . . . In the absence of an authoritative ruling by the Supreme Court on the point, we accept

the view expressed by Stone, C. J., dissenting, in the *Schneiderman* case . . . that there are principles of the Constitution, within the meaning of the Nationality Act, "and that among them are at least the principle of constitutional protection of civil rights and of life, liberty and property, the principle of representative government, and the principle that constitutional laws are not to be broken down by planned disobedience. I assume also that all the principles of the Constitution are hostile to dictatorship and minority rule; and that it is a principle of our Constitution that change in the organization of our government is to be effected by the orderly procedures ordained by the Constitution and not by force or fraud."

Prize courts—jurisdiction—alleged capture by private sailors of co-belligerent.

Y. S. LING ET AL. v. 1,689 TONS OF COAL LYING ABOARD S. S. WILHELMINA. 78 F. Supp. 57.*

U. S. Dist. Ct., W. D. Wash., Oct 7, 1942. Bowen, D. J.

A Dutch merchant vessel bound for Japan with a Japanese-owned cargo of coal heard on Dec. 8, 1941 of the outbreak of war with Japan, and thereupon deviated to Alaska. With the approval and assistance of the Chinese officers and crew, the Dutch master disposed of part of the coal in Alaska and brought the remainder to Seattle. Apparently as a result of their failure to receive certain bonuses, the Chinese officers and crew on April 7, 1942 filed a libel in the U. S. District Court seeking to condemn the coal as prize of war captured by them. The master of the vessel and the Government of The Netherlands raised objections to the jurisdiction of the court, which were upheld.

The court held that an American prize court lacked jurisdiction of a prize proceeding for condemnation brought by nationals of a co-belligerent, inasmuch as no action had been taken by the President under the provisions of the Act of August 18, 1942, making American prize courts available for adjudication of captures by co-belligerents. The court also stated that the facts did not show any intent by the libellants to make a capture of the cargo, when they brought the vessel into an American port in order to escape the Japanese; and it expressed doubts whether private individuals could lawfully effect a capture as prize, unless there were authorization or ratification by some government.

Expatriation—renunciation of citizenship under duress.

TADAYASU ABO ET AL. v. CLARK. 77 F. Supp. 806.

U. S. Dist. Ct., N. D. Calif., April 29, 1948. Goodman, D. J.

Approximately 2,300 native-born American citizens of Japanese ancestry brought proceedings in equity to obtain a decree rescinding their respective

* This case is digested in view of the paucity of recent American prize decisions and of the fact that it was not reported until Aug. 9, 1948, although it was decided in 1942.

renunciations of American citizenship signed by them in 1945 while interned at Tule Lake Relocation Center. About 264 of these plaintiffs had been ordered deported as enemy aliens; some of these were voluntarily released by the Department of Justice and the remainder were released on habeas corpus, 76 F. Supp. 664, this JOURNAL, Vol. 42 (1948), p. 722. Plaintiffs claimed that their renunciations were void because made under duress and coercion of the Government and of pro-Japanese groups in the Relocation Center, because the renunciation hearings were conducted without due process of law, and because the provision of the law relating to renunciation (8 U.S.C.A. § 801(i)) was unconstitutional.

Declining to pass upon the constitutional question, the court held that plaintiffs were entitled to an interlocutory decree canceling their renunciations and declaring them citizens; the Government was given 90 days within which to present evidence that any particular plaintiff acted freely and voluntarily. Judge Goodman stated that affidavits of both sides showed that the renunciations were due to a combination of factors, including pressure exerted by two pro-Japanese factions at Tule Lake, parental pressure by alien parents on citizen children, fear of community hostility upon release and consequent resort to renunciation to assure further detention, the conviction that they would be deported to Japan in any event and that upon arrival in Japan they would be subject to reprisals unless they renounced, and "Mass hysteria, the outgrowth of the combined experience of evacuation, loss of home, isolation from outside communication and concentration in an enclosed, guarded, overpopulated camp with little occupation, inadequate and uncomfortable living accommodations, dreary and unhealthful surroundings and climatic conditions." The court added that "such factors, singly or in combination, cast the taint of incompetency upon any act of renunciation made under their influence by American citizens interned without Constitutional sanction, as were the plaintiffs."

Nationality—derivative—minor child of divorced mother.

PETITION OF DONSKY. 77 F. Supp. 832.

U. S. Dist. Ct., S. D. N. Y., May 13, 1948. Hulbert, D. J.

Naturalization was denied to a child born in Cuba on August 30, 1933, on the sole ground that she was already an American citizen. Her father was a Cuban national. Her mother was born in 1909 in Florida and moved to Cuba with her parents when five years old; she retained her American citizenship and made frequent trips to the United States, but remained resident in Cuba until 1936. She married a Cuban national in 1932. After obtaining a divorce and custody of the child in 1936, she came to the United States with the child.

The court held the child to have acquired American citizenship upon the termination of her parents' marriage and her coming to the United States with her mother. The Act of April 14, 1802, Rev. Stat. § 2172,

which remained in force until the Nationality Act of 1940 became effective January 13, 1941, was held to confer citizenship upon the child. That Act provided: "The children of persons who have been duly naturalized under any law of the United States, . . . being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof." Although the mother did not lose American citizenship by marriage to the Cuban in 1932, the termination of the marriage and return to the United States in 1936 was treated as a "resumption" of citizenship (on the authority of the Attorney General's opinion in the case of Fernando Jorge Coll, 37 Op. Atty. Gen. 90), and such "resumption" was regarded as equivalent to "naturalization" of the mother (either "resumption" or "naturalization" of the parent being sufficient to confer citizenship on the minor child under the law of 1907, here inapplicable because of failure to meet residence requirements). The court held that though the 1802 Act spoke of "parents," naturalization of the mother alone would suffice if the father were dead or if the parents were divorced and the child living with the mother. *Petition of Black*, 64 F. Supp. 518 (D. Minn., 1945) was cited as supporting this decision.

Enemy aliens—agent of enemy government.

SARTHOV v. CLARK. 78 F. Supp. 139.

U. S. Dist. Ct., S. D. Calif., June 2, 1948. McCormick, D. J.

The executor of von Neindorff, who died in Germany in 1944 after some time in a Nazi concentration camp, sued under Section 9 of the Trading with the Enemy Act for the return of property in California belonging to the deceased, which had been vested by the Alien Property Custodian in 1943 and 1944. Von Neindorff was born in Switzerland of German parents in 1870, was naturalized in the United States in 1896, went to Germany with his wife in 1939, returned to the United States for six months in 1940, registered as a voter in California, and went back to Germany in October, 1940. From the fall of 1940 until after the entry of the United States into the war in December, 1941, he engaged in counter-espionage work for the German Government. In July, 1942, he was made a prisoner for offenses against the German Government.

Judgment was given for the defendant Attorney General as successor to the Alien Property Custodian. Under the Act, property was not to be returned to one who was an "enemy" or "ally of enemy." The court held that von Neindorff was not "resident within enemy territory" as that term was used in defining "enemy," such residence being "something different from and more than living within the specified areas. It is rather indicative of a settled and permanent place of abode, volitionally acquired and voluntarily assumed. It is a habitation having domiciliary properties." The court held that von Neindorff had not changed his domicile

from California. However, the court found him to be an "enemy" on the ground that he had been an agent of the German Government on and after December 11, 1941, when war broke out between the United States and Germany.

Treaty—effect as local law after termination—alien land laws.

PALERMO v. STOCKTON THEATRES, INC. 195 P. (2d) 1.

Supreme Court of California, June 15, 1948. Schauer, J.

Plaintiff's predecessor in interest leased land to defendant's predecessors in 1930, for commercial purposes, for a 10-year term, and in 1934 gave a right to renew for 10 years past the original period. The lessees were Japanese nationals, who formed defendant corporation and in 1935 transferred the lease to it with the consent of plaintiff's predecessor. At the time the lease was executed, neither the individual lessees nor the corporation would have been permitted to hold the land, under the Alien Land Law of California, save for an exception allowing it "in the manner and to the extent, and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such" alien or member or stockholder "is a citizen or subject, and not otherwise." The treaty of April 5, 1911, between the United States and Japan gave the right to lease land for commercial purposes. After this treaty was terminated in 1940, the defendant elected to exercise its option for a ten-year renewal of the lease, which was executed September 13, 1940. In 1944 plaintiff sued to obtain a declaratory judgment adjudging the lease void because in violation of the California Alien Land Law. The trial court gave judgment for plaintiff, and the District Court of Appeal reversed the judgment. The Supreme Court followed the District Court of Appeal, and adopted the latter's opinion as in large part its own.

The court held that the provision of the Alien Land Law resulted in the incorporation of the Japanese treaty as it stood at the time, and that termination of the treaty did not affect the situation. The court added that since it had concluded that "abrogation of the treaty had no effect on the provisions of the Alien Land Act," the 1940 lease was valid irrespective of abrogation. It was therefore unnecessary "to consider what effect on vested or contingent rights the repeal or annulment of those provisions would have had."

Justices Gibson, Carter and Traynor, concurring, were further of the opinion that the California Alien Land Act was unconstitutional, saying in part:

If the state could prohibit aliens ineligible to citizenship from owning or leasing real property it would thereby effectively prevent such persons from conducting ordinary industrial or business enterprises.

- Such a discrimination, if valid, would confine the alien's right to engage in an ordinary means of earning a livelihood to serving as an employee or servant of a citizen or of a foreign national permitted to

own or lease real property or of corporations owned by a majority of such citizens or nationals. The effect of such legislation is to impose upon the alien ineligible to citizenship an economic status inferior to all others earning a living in the state. Such a discrimination cannot be sustained under the Fourteenth Amendment to the Constitution of the United States.

Immunities—school for foreign consulate.

BLISS v. NICOLAEFF. 79 N. Y. S. (2d) 63.

New York, Appellate Division, 1st Dept., May 6, 1948. Eder, J.

Plaintiff in 1940 leased premises to defendant for use as a school for children of Soviet officials in New York. Although only the defendant signed the lease and there was no reference to the Soviet Consul General therein, there was a separate guarantee by the Soviet Consul General that rent would be paid. Plaintiff's action against defendant to recover the premises was dismissed by the Municipal Court, Borough of Manhattan, on the ground that a State court had no jurisdiction of suits against a foreign consul. The Appellate Division reversed and ordered a new trial, holding that the suit was not against the Consul. It added that:

Just what "official" status the tenant occupied is not disclosed; it is a mere conclusory allegation; but assuming, arguendo, the tenant occupied a post as an official of the Soviet government, it does not follow that he thereby became "entitled" to the privileges of sovereign immunity from suit. Not every official of a foreign government enjoys such immunity or privilege; only those officials enjoy immunity or privileges as come within the categories mentioned in the Constitution, or the Judicial Code, or treaty, or by express recognition by our Government.

The court continued:

There has been neither appearance nor answer here by the Soviet Consul General, and he has not made any claim of immunity or privilege, nor has he raised any objection to the jurisdiction of the court below. . . .

The mere signing of the guarantee by the Soviet Consul General does not make him a party to the lease, or give him any interest therein or give him any interest in the demised premises, nor did the fact that his checks were used to pay the rent. . . .

The premises were utilized by the tenant Nicolaeff, as a school, and while used to educate the children of Soviet officials, it was in no sense used by the Soviet Consul General in the administration of his office, as such.

States—position of American Indian nation.

ANDREWS v. STATE. 79 N. Y. S. (2d) 479.

New York Court of Claims, May 19, 1948. Gorman, J.

In dismissing a claim to certain lands brought by a member of the Onondaga Nation of Indians, the court discussed the earlier status of the Onondaga Indians and of the Six Nations which comprised the Iroquois Con-

federacy. In connection with their political organization, in the 17th and 18th centuries, Judge Gorman said: "Their stubborn resistance ultimately secured recognition of their claims to independence and territorial rights from France and England. They were recognized in most places as sovereign allies of the crown and were primarily instrumental in excluding their territory from French occupation. They never acknowledged dependency to the provincial government [of New York]."

He added:

It may be that these Indians were wards of this State at the time it became an independent sovereignty on the adoption of the Declaration of Independence and as successor to the British Crown before the adoption of the Constitution, but by . . . the Constitution, Congress was expressly authorized to regulate commerce of the Indian tribes and "long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and the duty of exercising a fostering care and protection over all dependent Indian communities within its borders, whether within its original territory or territories subsequently acquired, and whether within or without the limits of a state." *United States v. Sandoval*, 231 U. S. 28, 46. . . . The nature of this relationship between the United States and these Indians is that of guardian and ward . . . , and this jurisdiction is paramount and exclusive.

On a related point the court added:

The Citizenship Act of June 2, 1924 . . . and the Nationality Act of 1940, § 201 . . . , conferring citizenship on Indians, have been held not unconstitutional as to the Six Nations, notwithstanding that the relation of these tribes to the United States may have been that of an independent nation by virtue of treaties between the signatories and that the above Acts may have been at variance with the treaty status of the Six Nations. *Ex parte Green*, 2 Cir., 123 F. 2d 862, certiorari denied *Green v. McLaren*, 316 U. S. 668. . . . In the above case the Court followed the general proposition that a domestic law conflicting with an earlier treaty must be honored by domestic courts.

The court pointed out that the Nationality Act of 1940 specified that the granting of citizenship to Indians should not impair rights to tribal or other property.

Diplomatic immunity—archives—plotting against receiving state.

ROSE v. THE KING. [1947] 3 D. L. R. 618.

Quebec, Court of King's Bench, Appeal Side, Nov. 20, 1946.

In dismissing an appeal from the conviction of a member of the Canadian Parliament for conspiracy to commit offenses against the Official Secrets Act, 1939, in connection with the supplying of information to Soviet agents

in Canada, the court dealt at length with defendant's objection that documents taken from the Soviet Embassy by an embassy employee could not properly be used in evidence against him. The defendant claimed no diplomatic status, and neither the former employee nor the Soviet Embassy claimed immunity with respect to the documents. The documents came from the office of the military attaché, which office was alleged to have been the center of the espionage. Judge Bissonnette said in part:

This privilege of inviolability is very extensive. It protects even the person of the ambassador, his personnel, his dwelling and his documents and archives, including his correspondence. . . . modern public international law rejects the theory of extraterritoriality and prefers rather the necessity of recognizing a full dignity in the State which delegates an ambassador. . . .

The fundamental principle of inviolability is the liberty of action and of word, necessary and indispensable to a public minister. It is therefore a necessary consequence of the fundamental right of independence, of sovereignty, and of mutual respect of States. . . .

If the public minister indulges in doings contrary to the dignity of the Sovereign and the safety of the State which has received him and thereby abuses his immunity, can he nevertheless claim the privilege of immunity?

. . . If one understands, in such particular case, that the diplomatic agent would be deprived of his immunity in the sense that he would become subject to the authority and control of the civil and criminal jurisdictions of the State which he just offended, it must be recognized that this privilege subsists nevertheless and that this agent must escape from the judicial power.

On the other hand, if one understands that the privilege of immunity becomes illusory because the executive power, in whom the exercise of the external sovereignty of the State reposes, has the right and the duty to take every means of prevention against such agent, as well as to apply all measures of repression in order to render reprehensible acts of a diplomat who violates his mandate inefficacious, it must be said that such immunity would cease to exist. . . .

For practical purposes, it is recognized in the present state of international law, especially since the war of 1914-1918, that if a diplomatic corps conspires against the State to which it is accredited, organizes espionage or sabotage, or is guilty of real acts of war against the State, the offended Government has the right immediately to take every repressive measure, any initiative which may annihilate or destroy the acts of disloyalty endangering the public as a result of the abuse of office of such Embassy. And these measures of repression or protection could go as far as expelling the ambassador, or putting his mansion, his documents and archives under a sort of seal. If there is error or abuse of authority on the part of the State which takes such initiative, everything must be governed or explained through the ordinary diplomatic channels. . . .

International law creates a presumption of law that documents coming from an Embassy have a diplomatic character and that every Court of Justice must refuse to acknowledge jurisdiction or competence

in regard to them. But can this presumption be avoided, rebutted or destroyed? If the acts committed by the diplomatic corps were contrary to the legislation of the country to which it is accredited and if, *a fortiori*, they had the immediate purpose of putting the safety of the State in peril, there is no longer any freedom of the dwelling or of the documents, chattels, effects or armaments which may be found there. . . .

The first duty of a diplomatic agent is to respect the security of the State. The diplomatic agent and his personnel cannot be summoned to Court, but any measure to prevent them from injuring it can be taken: surrounding and closing in upon the Embassy, requiring the turning over to the authorities of any guilty person who seeks asylum, seizing and arresting any courier, documents, plans, photographs, reports, etc., the moment the State is certain that its safety is in peril. Without stressing it unduly, I point out that this competence to repress the abuses of a diplomatic agent *reposes exclusively in the executive power*. If immunity is not admitted by the executive, any discussion becomes purely academic.

If documents seized are then turned over to a Court of Justice for the prosecution of a crime committed by one of the citizens of the country, the Courts cannot give effect to immunity, cannot counteract the decision of the executive of the country, cannot exercise competence in a field, upon a matter exclusively governed by the rule of external sovereignty, that is to say, from the absolute and exclusive authority of the State to condition and determine its own relations with other States.¹

Recognition—foreign decrees—proof of foreign law.

A/S TALLINNA LAEVAUHSUS ET AL. v. ESTONIAN STATE S. S. LINE ET AL. 80 Lloyd's List L. R. 99.

England, Court of Appeal, Dec. 9, 1946.

The Estonian steamship *Vapper* was sunk on July 6, 1940, by an Italian submarine off England. The Estonian owners had war-risk insurance with an English firm, which was ready to pay, but before the claim was adjusted, Estonia was occupied by the Soviet forces, an Estonian Soviet Government came into power, and Estonia entered the Soviet Union. The underwriters paid the insurance moneys into court in interpleader proceedings, which took place between the former owners and the Estonian State S. S. Lines, which claimed as an agent of the Soviet Government of Estonia by reason of nationalization decrees issued after that government came into power. In response to an inquiry by the trial court, the British Foreign Office answered that the British Government recognize "the Government of the Estonian Soviet Socialist Republic to be the *de facto* Government of Estonia, but do not recognize it as the *de jure* Government of Estonia"; that Estonia has *de facto* entered the Soviet Union but that this is not recognized *de jure*; and that the Republic of Estonia as consti-

¹ Followed by the Ontario Court of Appeal in *Rez v. Lunan*, [1947] 3 D. L. R. 710, (Feb. 28, 1947).

tuted prior to June 1940 "has ceased *de facto* to have any effective existence." At the trial the former owners introduced evidence of the former Estonian law and of the illegality under that law of the purported nationalization, but there was no evidence introduced as to the applicable Soviet law of Estonia or of the Soviet Union. The Court of Appeal affirmed the decision of the trial court that the former owners were entitled to the sum paid into court.

The court treated foreign law as a "fact" which required sufficient proof, and held that this was lacking as to any Soviet Estonian law depriving the former owners of their property rights to the insurance moneys, which became due prior to the revolution in Estonia. Lord Justice Scott said, in part:

The illegality of the various legislative steps taken under Russian domination, as judged by the criterion of the law and constitution of old Estonia . . . , would, of course, have become immaterial if the Russian legislation had been proved. . . .

. . . In view of the answers of the Foreign Office . . . , if either Soviet Russia [Estonia!] or the Union of Soviet Socialist Republics had by legislation (effectively proved in the Court below) divested the respondents of their rights to the insurance moneys and vested them in the appellant company, the property would have passed, unless the fact that the *choses in action* in respect of which the underwriters admitted liability were outside the territorial jurisdiction of Estonia or Russia would have prevented the property passing, or deprived the Courts here of jurisdiction so to hold, either for that reason, or because the legislation was penal in character.

Lord Justice Tucker said with respect to the view that the new Estonian legislation was invalid because not in compliance with the old Estonian constitution: "In view of the *de facto* recognition of the Estonian Government, which I think on the evidence must be regarded as having retroactive effect at least to July 21, 1940, this objection cannot prevail." He agreed, however, that there was before the court none of the necessary evidence as to "the exposition, interpretation or adjudication of these decrees under the new regime after the overthrow of the former constitution."

States—sovereignty of Canada.

ATTORNEY GENERAL OF ONTARIO *v.* ATTORNEY GENERAL OF CANADA.

[1947] 1 All Eng. L. R. 137.

Privy Council, Jan. 13, 1947. Lord Jowitt.

The Privy Council held that in view of the Statute of Westminster, 1931, the Parliament of Canada would have the power to pass a bill which had been introduced, which would give the "exclusive ultimate appellate civil and criminal jurisdiction within and for Canada" to the Supreme Court of

Canada, thus putting an end to the possibility of appeals from Canada to the Privy Council. The court said, in part:

Giving full weight to the circumstances of the union and to the determination shown by the provinces as late as the imperial conferences which led to the Statute of Westminster that their rights should be unimpaired, nevertheless it appears to their Lordships that it is not consistent with the political conception which is embodied in the British Commonwealth of Nations that one member of that Commonwealth should be precluded from setting up, if it so desires, a supreme court of appeal having a jurisdiction both ultimate and exclusive of any other member. . . .

Prize law—bringing to port for examination.

THE MIM. [1947] 2 All Eng. L. R. 476.

England, Probate, Divorce and Adm. Div., July 31, 1947. Hodson, J.

The Norwegian vessel *Mim*, bound from Australia with a cargo of wheat in bulk for Norwegian ports, was stopped on October 31, 1939, northwest of the Faroe Islands, boarded, and ordered by the boarding officer to go to the British port of Kirkwall for better examination. On the way she ran aground and became a total loss. The Norwegian owners brought a claim for damages, based upon the allegedly improper seizure or capture of *The Mim*. In dismissing the claim, the court said in part:

The plaintiffs seek to draw distinction between the right of visit and search and the right of examination. It is not disputed that, according to modern practice, it is recognised that examination cannot take place at sea and that ships can properly be taken into port for that purpose, but it is argued that visit and search are not co-extensive, that visit may be right but search may not. It is said that the ship's papers were in order, and that, in fact, there was no suspicion, and that, therefore, from the moment when the boarding officer was satisfied, the ship ought to have been permitted to continue her voyage.

In the absence of reasonable suspicion the ship must be allowed to proceed. If she is detained, *e.g.*, by mistake, . . . or if she is detained for some ulterior reason unconnected with search, the Crown cannot rely on the belligerent right of visit and search as an answer to the plaintiffs' claim. The evidence of the boarding officer in the present case was that there was no examination of the hold, for that could not be done at sea. No question of mistake arises. It cannot be said that there was any ulterior object in sending her to Kirkwall. The purpose on the evidence can only have been that she might be examined. The charter party had a wide range of ports of discharge, including Hamburg. . . . The boarding officer found a neutral ship which admittedly had come farther north than her usual course to Norway to avoid being stopped. She had a cargo of grain on board which could not be examined at sea. He could hardly in those circumstances be satisfied, even if the papers which he had seen appeared to be in order. . . . In my judgment, such reasonable suspicion existed

as to justify the action taken. If in such a case a ship could not lawfully be sent to a convenient port for examination, the belligerent right of visit and search would be of little value.

Jurisdiction—vessel on high seas—enforcement of deportation order.

REX v. SECRETARY OF STATE FOR FOREIGN AFFAIRS. [1947] 2 All Eng. L. R. 550.

England, Vacation Court, Aug. 29, 1947. Jenkins, J.

Habeas corpus was sought on behalf of a party of Jewish persons who had sought to enter Palestine illegally on a vessel which was intercepted by a British Government vessel off Palestine and escorted into Palestine waters. They were ordered deported by the Palestine authorities, and returned on three British vessels to the south of France. When they refused to land there, despite permission from the French authorities, they were told they would be taken to Hamburg, and were en route when the writ was sought, on the ground that detention became illegal when they had passed outside the territorial jurisdiction of Palestine.

Habeas corpus was denied, the court holding that there was proper authority to order the deportation and that this included conveyance of the deported person to his destination. *Regina v. Lesley*, Bell C. C. 220 (1860), was distinguished, on the ground that there "The captain of the ship undertook for reward to remove the people in question, but here the masters of the vessels were acting in pursuance of the deportation order. There could be no ground for suggesting that the bargain made by the Chilean Government in *R. v. Lesley* has any extraterritorial effect, but it does not follow that the deportation order has no extraterritorial effect." Following *Attorney-General for Canada v. Cain*, [1906] A.C. 542, the court held that the effect of the deportation order "continued in force so far as was necessary to place the deportee on the soil of some other country."

Armistice—unconditional surrender of Germany construed as.

RE ORCHARD. [1948] 1 All Eng. L. R. 203.

England, Chancery Division, Jan. 16, 1948. Vaisey, J.

In her will dated November 23, 1940, a testatrix who died September 6, 1945, made certain provisions "in the event of an armistice having been concluded between Great Britain and Germany in the present war before the date of my death." The court declared that within the meaning of the will there had been such an "armistice" in the unconditional surrender of Germany, which took place before testatrix's death. Judge Vaisey said, in part:

I am informed that, in the view of the War Office, no armistice was concluded between Great Britain and Germany. Germany surrendered unconditionally, and the date of various instruments of surrender

signed by the Allies and the Germans extended from a date in April to a date in May. There were, apparently, seven such instruments relating to various fields of war in different parts of Europe, and all were dated before the death of the testatrix.

If the word "armistice" is used in contradistinction to "surrender," of course, no armistice was concluded between Great Britain and Germany, but it seems to me that an unconditional surrender results in an armistice if it is accepted by the nation to whom it is tendered. I place no reliance on the fact that there were terms of surrender signed by both sides. . . . where I find a cessation of active hostilities for an indefinite time and in such circumstances as gave rise to a general expectation that they would not be resumed, a cessation that was intended and expected to be the preliminary to the permanent laying down of arms, it seems to me that there was an armistice in the sense in which the testatrix used the word.

Nationality—law governing—refusal to accept Nazi denationalizing decree.

LOWENTHAL *v.* ATTORNEY-GENERAL. [1948] 1 All Eng. L. R. 295.
England, Chancery Division, Jan. 29, 1948. Romer, J.

Plaintiffs, Jews of German origin, who came to England in 1933 and 1934, obtained permits to reside permanently in England, applied for naturalization in 1938 and 1939, and were naturalized as British subjects in 1946, sought declarations that since the German decree of November 25, 1941 they had been stateless persons. This was in order to obtain the benefit of certain patent legislation extending British patents, which was not available to persons who were subjects of the enemy state. Plaintiffs claimed that (1) British courts recognize the status of statelessness, (2) the nationality of a foreigner must be determined by the municipal law of the country to which he belongs or is alleged to belong, and (3) by the municipal law of Germany plaintiffs had ceased to be German. The German decree of November 25, 1941 deprived of German nationality all Jews residing outside Germany, and expropriated their property.

The court held against plaintiffs' request, finding them still to be German nationals until they became naturalized as British subjects, following *Rex v. Home Secretary, Ex parte L.*, [1945] K. B. 7. The court said: "it would be a curious anomaly if, by reason of foreign legislation, an individual were, on grounds of enemy status, to be subject to some disqualifications affecting enemy aliens here but concurrently free from others"; and that "it is a reasonable conception that such disqualifications should be removed, if they are removed at all, by the Parliament of this country, and not by the government of a foreign state, and *a fortiori* a foreign hostile state." The court accepted the argument of the Attorney General that it would be contrary to public policy to recognize the power of a foreign state to relieve its nationals in time of war from disabilities attaching to them in England under English law. The court refrained

from expressing an opinion upon the further contention that the German decree, viewed as a whole, was of a penal character and therefore would not be recognized in so far as its operation was sought to be extended to England.

Prize law—enemy character—flag rather than ultimate control.

THE UNITAS. [1948] 1 All Eng. L. R. 421.

England, Probate, Divorce and Admiralty Division, Feb. 20, 1948.

Lord Merriman, P.

The court condemned as prize a whaling factory ship captured by invading Allied forces in a German port in June, 1945. The ship was registered as a German ship and flew the German flag. It was claimed, however, by two Dutch companies which, through their Dutch subsidiaries, were the sole stockholders in a German company controlled from Rotterdam. These Dutch companies had extensive interests in Germany, and in order to get something out of them, arranged in 1936 for the construction in Germany of a German whaling fleet. The ship in question was built in Germany for the German subsidiary, and chartered by it to another German company in which it had less than 50 per cent interest. After the outbreak of war in 1939 and while The Netherlands remained neutral, the claimant Dutch companies did nothing to dissociate themselves from the activities of their subsidiaries in Germany. The claimants' chief arguments were that the ship was placed under German flag under duress, because it was built only as a result of pressure by the German Government, and that under the principles of *Daimler Co., Ltd. v. Continental Tyre & Rubber Co.*, [1916] 2 A. C. 307, the court should look behind the German ownership of the ship to the "whole and sole ownership" of the vessel "in every real and business sense" in the Dutch claimants.

The court held that in English law duress of goods, as contrasted with duress of person, did not avoid a contract, and even assuming that in prize law duress of goods would suffice, yet none was proved. The general rule was that the character of a ship is determined by her flag, and here there was nothing to take the case out of that general rule. On the second point, Lord Merriman said in part: "In my opinion, there is no authority for applying the principle of the *Daimler* case in favour of claimants in prize, though it is clearly applicable in favour of the Crown: *The Glenroy* ([1945] A. C. 137). Moreover, it seems to me that it would be contrary to settled principle to do so." An additional ground for deeming the ship to be of enemy character was that the Dutch claimants had a "house of trade" in enemy territory, and had not dissociated themselves from it after the outbreak of war.

Jurisdiction—high seas offshore—vessel without flag—Palestine immigration.

MOLVAN v. ATTORNEY GENERAL FOR PALESTINE. 81 Lloyd's List L. R. 277.

Privy Council, April 20, 1948. Lord Simonds.

Pursuant to the British Mandate for Palestine and Orders in Council, the High Commissioner for Palestine issued in 1941 and 1945 regulations with respect to control of immigration into Palestine, which provided that persons abetting illegal immigration should be punished and the vessel or other means of conveyance used for the purpose should be forfeited. *The Asya* was a Turkish vessel owned by a person who was not a British or Palestinian national. When sighted by a British destroyer on March 27, 1946, about 100 miles off Palestine on the high seas, she flew no flag, but hoisted the Turkish flag. A boarding party from the destroyer went aboard, and *The Asya* hoisted the Zionist flag. Charts on board indicated that *The Asya* had come from France and was bound for a point near Tel-Aviv; though a freighter with no passenger accommodations except bunks fitted in the hold, she had 733 persons on board, none of whom had passports, travel documents or visas to enter Palestine. The boarding party brought *The Asya* to Haifa, escorted by the destroyer. On arrival, police and immigration authorities took the passengers ashore to a detention camp. On application of the Attorney General for Palestine, the vessel was held forfeited, and the Supreme Court of Palestine dismissed an appeal. On appeal to the Privy Council, counsel for the owner contended that the seizure of the vessel was contrary to international law, that the ordinance was repugnant to the Mandate, and that the ordinance did not apply to a non-Palestinian owner of a vessel which was not Palestinian.

In denying the appeal, Lord Simonds said for the Privy Council:

If the terms of the Mandate required the Mandatory Power to facilitate Jewish immigration into Palestine under any conditions and at any cost to other interests, that contention might be maintainable. But the Mandate does not do so. On the contrary, the facilitation of Jewish immigration is expressly made subject to the term that the Administration shall ensure that the rights and position of other sections of the population are not prejudiced and to the further term that the immigration shall be under suitable conditions. Their Lordships see no reason to suppose that the Immigration Ordinance (which is general in its application to persons of any nation and any creed) departs in the smallest degree from the terms of the Mandate or is in any measure repugnant to or inconsistent with its provisions.

The Privy Council found that the ordinance extended to persons and vessels regardless of their nationalities. Lord Simonds continued:

- The *Asya* carrying unlawful immigrants was, whether voluntarily or not, in Palestinian territorial waters. The unlawful immigration was an offence under the Ordinance, and the owner, the appellant, is

deemed to have abetted that offence unless he can escape under one or other of the sub-clauses. . . . This he has not done. Therefore under Sect. 12 (3) (iii) (a) the *Asya* is forfeited to the Government of Palestine, and the Court must confirm the forfeiture unless the appellant can show cause against it.

It is to be noted . . . that the issue would be precisely the same if the *Asya* had been sighted, boarded and directed to port while hovering immediately outside the territorial waters of Palestine with a view to making an illegal landing of her passengers under cover of darkness. . . .

The argument of the appellant has assumed that the Ordinance is to be read as if it authorized seizure of the *Asya* on the high seas. . . . It would appear that this assumption has been rejected in the Courts of Palestine, and, as their Lordships think, rightly. But inasmuch as the matter has been debated before them with so much reference to authority, they think it right to say that in their opinion the Ordinance is not open to challenge on the grounds that it offends against any established principle of international law, even upon the assumption that it directly authorized, in the circumstances in which those acts were done, the seizure of the *Asya* on the high seas and her compulsory direction to a Palestinian port. The appellant cannot succeed in this plea unless he invokes a doctrine which is, in the words of Lord Alverstone, C. J., in *West Rand Central Gold Mining Company v. Rex*, [1905] 2 K. B. 391, at p. 407, "one really accepted as binding between nations." . . .

To satisfy this test the appellant has invoked the doctrine which is called "the freedom of the open sea," alleging that under the shield of that doctrine the *Asya* was entitled, whatever her mission might be, to sail the open sea off the coast of Palestine. Their Lordships cannot assent to the proposition that any such right, unqualified by place or circumstance, is established by international law. There is room for much discussion within what limits a State may for the purpose of enforcing its revenue or police or sanitary law claim to exercise jurisdiction on the sea outside its territorial waters. It has not been established that such a general agreement exists on this subject as to satisfy the test laid down by Lord Alverstone, but, even if it had been, it is far from clear that it would be applicable to the case of a Mandatory Power carrying out a common policy, the execution of which had been entrusted to it by other Powers. Their Lordships could not in any event conclude that any principle of international law had been violated.

But it further appears to them that in the circumstances of the present case a discussion of the problem is somewhat academic. For the freedom of the open sea, whatever those words may connote, is a freedom of ships which fly and are entitled to fly the flag of a State which is within the comity of nations. The *Asya* did not satisfy these elementary conditions. No question of comity nor of any breach of international law can arise if there is no State under whose flag the vessel sails. . . .

Having no usual ship's papers which would serve to identify her, flying the Turkish flag, to which there was no evidence she had a right, hauling it down on the arrival of a boarding party and later hoisting a flag which was not the flag of any State in being, the *Asya* could not

claim the protection of any State, nor could any State claim that any principle of international law was broken by her seizure.

As for the contention that the ordinance was invalid in purporting to penalize persons who were not Palestinian nationals nor resident in Palestine, Lord Simonds said:

The offence itself can only take place in Palestinian territory, for it consists in the unlawful entry into that territory. But it can be abetted by, and can hardly take place without the abetment of, those who are outside the territory. . . . Particularly the offence can hardly take place without the abetment of the master, owner or agent of the offending vessel, whose actual complicity, while they are outside the jurisdiction, may not easily be susceptible of proof. Therefore such persons are by the terms of the Ordinance "deemed" to have been guilty of abetment and the vessel is liable to forfeiture. The question then is whether there is any principle of international law which is violated by an Ordinance which, in the circumstances in which this Ordinance was passed, penalizes persons of whatever nationality, and wherever resident, who abet or are deemed to abet an offence against its laws. It is to be observed that, so far as their own persons are concerned, they cannot be punished so long as they remain outside the jurisdiction. The question therefore narrows down to this, whether they may be penalized by the forfeiture of their property which is within the jurisdiction. Their Lordships have not been referred to any decision nor to any textbook of authority which suggests that the enactment by a State of a penalty so expedient, if not essential, for the purpose of preventing an unlawful invasion of its territory, is contrary to any established principle of international law. . . . even if any principle of general acceptance could be found which appeared to cover the case it would still . . . remain to be considered whether an exception must not be made in the case of a Mandatory Power enforcing by action which seems to it essential, the policy which the principal Allied Powers entrusted to its charge.

War—contracts—between persons in enemy-occupied territory.

BOISSEVAIN v. WEIL. [1948] 1 All Eng. L. R. 893.

England, King's Bench Division, Apr. 23, 1948. Croom-Johnson, J.

While both parties were, because of war conditions, involuntarily resident in Monaco in 1944, plaintiff, a Dutch banker domiciled in The Netherlands, lent defendant, a British subject ordinarily resident in Monaco, a sum of money to be repaid after an armistice or when the law permitted. When defendant failed to repay, plaintiff brought an action, which was met with the defense that the transaction was unlawful (in the eyes of a British court) because it was "trading with the enemy." The court gave judgment for plaintiff, holding the contract enforceable under the laws of Monaco and not illegal under English common law or the Trading with the Enemy Act. There was some doubt as to whether Monaco was, strictly speaking, "enemy-occupied" territory in 1944; even if it were, the court said no rule of law prevented "a British subject involuntarily in an enemy

occupied country from lawfully making a contract of the nature made here with some one not an enemy.⁵⁷ The court expressed the view that neither of these parties wished to help the enemy; and added that with respect to contracts with the enemy, "performance would be illegal only in so far as it afforded assistance to the enemy during the war, and that it is no objection to the contract that it may profit the enemy after peace is restored."

CASES NOT SEPARATELY DIGESTED:

Aliens—deportation.

Ex parte Eng, 77 F. Supp. 74 (N. D. Calif., March 16, 1948).

Bisler v. Clark, 77 F. Supp. 610 (D. C., Dist. Col. undated).

United States ex rel. Zabadlija v. Garfinkel, 77 F. Supp. 751 (W. D. Pa., May 15, 1948).

Ex parte Fong Goey Jow, [1948] 1 D. L. R. 817 (Sup. Ct. Canada, Dec. 22, 1947).

de Marigny v. Langlais, [1948] 2 D. L. R. 801 (Sup. Ct. Canada, April 7, 1948).

Aliens—miscellaneous.

United States v. Evans, 333 U. S. 483, 92 L. Ed. 585 (U. S. Sup. Ct., March 15, 1948).

United States v. The F. V. Hill, 78 F. Supp. 67 (S. D. Fla., Dec. 5, 1947).

In re Giordano's Estate, 193 P. (2d) 771 (Cal. App., May 21, 1948).

Garcia v. State, 210 S. W. (2d) 574 (Tex. Cr. App., Jan. 21, 1948).

Enemy aliens—removal.

Ahrens v. Clark, 335 U. S. 188 (U. S. Sup. Ct., June 21, 1948).

United States ex rel. Fitterer v. Watkins, 77 F. Supp. 175 (S. D. N. Y., March 16, 1948).

Cooperative Committee on Japanese Canadians v. Attorney General of Canada, 176 Law Times Rep. 547 (Privy Council, Dec. 2, 1946).

Exchange control regulations of foreign country—Bretton Woods Agreements.

Frankman v. Anglo-Prague Credit Bank, [1948] 1 All Eng. L. R. 337 (K. B., Feb. 2, 1948).

Immunity—government-owned merchant vessel.

Taube Low v. S. S. Rossia, 1948 A. M. C. 814 (S. D. N. Y., April 6, 1948).

International air transport—Warsaw Convention.

Ross v. Pan American Airways, Inc., 1948 U. S. Av. R. 47 (Sup. Ct., N. Y. Co., Feb. 10, 1948).

Ulen v. American Airlines, Inc., 1948 U. S. Av. R. 161 (D. C., Dist. Col., April 20, 1948).

International labor conventions—maritime labor.

Smith v. United States, 167 F. (2d) 550 (C. C. A. 4th, April 1, 1948).

Jurisdiction—ports—sabotage on foreign vessels.

The Leme, 77 F. Supp. 773 (D. C. Ore., Jan. 12, 1948).

Jurisdiction—high seas—national vessel.

United States v. Vasilaky, 168 F. (2d) 191 (C. C. A. 2d, May 27, 1948).

Naturalization—"attached to principles of Constitution."

Wixman v. United States, 167 F. (2d) 808 (C. C. A. 9th, May 4, 1948).

Naturalization—"good moral character."

Calo v. United States, 79 N. E. (2d) 619 (Ill. Sup. Ct., May 20, 1948).

Jaselski v. United States, 79 N. E. (2d) 621 (Ill. Sup. Ct., May 20, 1948).

Petition of Walleitner, 78 N. Y. S. (2d) 592 (N. Y. App. Div., 2d Dept., May 3, 1948).

Naturalization—revocation.

United States v. Christoph, 167 F. (2d) 900 (C. C. A. 3d, April 30, 1948).

Naturalization—wife of employee stationed abroad.

In re Sugarek, 77 F. Supp. 998 (N. D. Calif., Dec. 8, 1947).

States—Ireland—legal position—rendition of fugitive criminals.

Rex v. Commissioner of Police, ex parte Nalder, [1947] 2 All Eng. L. R. 611 (K. B., Oct. 28, 1947).

Treaties—migratory birds—implementation.

Lansden v. Hart, 168 F. (2d) 409 (C. C. A. 7th, May 5, 1948).

War—duration.

Edwards v. Woods, 168 F. (2d) 827 (C. C. A. 8th, June 11, 1948).

Re Walpole, [1947] 4 D. L. R. 138 (Ontario High Ct., June 7, 1947).

War—enemy property and Alien Property Custodian.

Matarrese v. Matarrese, 59 Atl. (2d) 262 (N. J. Ct. Err. & App., May 13, 1948).

Estate of Gustav Herter, N. Y. L. J., June 21, 1948, p. 2326 (Surr., N. Y. Co., June 19, 1948).

In re Miller's Estate, 193 P. (2d) 539 (Ore., May 25, 1948).

Nakashima v. The King, [1947] 4 D. L. R. 487 (Exch. Ct. Canada, Aug. 28, 1947).

Fraenkel v. Whitty, [1947] 2 All Eng. L. R. 646 (Ch. Div., Oct. 30, 1947).

BOOK REVIEWS AND NOTES

International Law. By Charles G. Fenwick. New York and London: Appleton-Century-Crofts, 1948 (third edition). Pp. 1, 744. Appendices. Index. \$5.00.

Charles G. Fenwick has not for many years needed any introduction to students of international law, and the first edition of this book, published in 1924, immediately became recognized as one of the best standard treatises on the subject; it was revised in 1934, and now appears in a third edition, still more thoroughly revised in the light of the international developments of these dramatic years, and better than ever. A considerable amount of new material has been added, there has been some shifting of topics and chapters, and there has been here and there a change in emphasis; but these revisions are so skillfully done that it remains essentially the same book, reflecting Fenwick's ripened scholarship and practical experience during these later years, particularly as a member of the Inter-American Juridical Committee. In fact, a discouraging feature about the development of international law is the relative lack of significant progress since the writing of the first edition. "The questions presented in 1924 are again before us, and before us in more acute form. Can institutions be established which will not only restrain lawless violence but will so far promote the common interests of the nations as to take away the incentives to the use of force? How can national 'sovereignty' and 'independence' with their occasional psychopathic connotations, be brought into harmony with the rule of law and with the actual interdependence of states? Is the organization of the United Nations adequate to the task it has undertaken? What changes in the law are called for to meet the new conditions with which the international community is confronted?" (p. v). These persistent questions are not answered dogmatically or assuredly in this book, but Fenwick does suggest the answers by his careful and objective analysis of the problems involved.

Among the more notable features of this new edition are: (1) a considerable change and expansion in the discussion of the nature and scope of international law, especially in respect to the significance of sovereignty, international legislation, the Covenant and the Charter, and the dynamic concept of international law; (2) a more elaborate and up-to-date treatment of the science of international law, with copious references to the latest and best literature on the subject; (3) a much more adequate discussion of the position of individuals in international law; (4) a greatly expanded treatment of the question of recognition, in which there is a sharper distinction than before between recognition of states and of governments

and a fine analysis of the problems of Russia and Spain, of Latin American revolutions, of the development of inter-American policy, and of codification of the law on the subject; (5) very good chapters on the United Nations, the specialized agencies, and regional groups, these supplanting the similar but less extensive treatment of the League of Nations and related agencies in the previous edition.

These are, of course, only a sampling of topics, but are sufficiently indicative of the improved and up-to-date quality of the book. On some matters Fenwick has modified or changed his earlier views. For example, with respect to the position of individuals in international law, he previously gave the subject very scanty attention and stated his own view rather tersely as differing with those who considered individuals as subjects of international law (2nd ed., p. 87); while now, after reviewing the later developments at length, he frankly states: "In the presence of these facts it would seem unreal to say that individuals are not in some degree subjects of international law, at least in respect to the rules of substantive law" (3rd ed., p. 134). On the business of war and neutrality, however, Fenwick has not changed his mind. He expressed regret in the first edition (1924) "that a less conspicuous place could not have been assigned to the laws of war and neutrality, or that treatment of them might not have been omitted altogether as unworthy of a scientific study" (1st ed., p. x); in the second edition (1934) he felt obliged to note that the chapters on these subjects were retained "for the same reasons that led to their inclusion in the first edition" (2nd ed., p. xiii); he still feels, more keenly than ever, that war has been legally outlawed, that "the obligation to settle disputes by pacific means is now absolute, allowing for no exceptions or qualifications" (3rd ed., p. 41), and he carefully notes that his present discussion of the laws of war is in the past tense (p. 550, n. 36); but nevertheless he fully recognizes the practical possibility of war in the future and, for an unwilling scholar, gives a fine exposition of the international law that may in that case be applicable. Similarly, with respect to neutrality, Fenwick's somewhat cautious view in the previous edition that "the Covenant of the League of Nations put an end in principle to the traditional law of neutrality" (2nd ed., p. 613), is now supplanted by the more positive statement that "the adoption of the Charter of the United Nations on June 26, 1945, finally marked the end of neutrality as a legal system" (3rd ed., p. 621). His attitude on this problem has, of course, been particularly well stated in his *American Neutrality: Trial and Failure* (1940), as well as in numerous articles.

No book on international law will completely please every reader. The reviewer, feels, for example, that Fenwick's analysis of the Kellogg Pact is much too cold and does not sufficiently emphasize the obstructive nature of that instrument, as interpreted and applied; and there might well have been a more extended analysis of the war crimes problem, especially in its

relation to the position of individuals in international law. Students of international law will, however, warmly welcome this volume as one of the very best and most useful in the field.

CLARENCE A. BERDAHL

University of Illinois

Nozioni di Diritto Internazionale. By Gaetano Morelli. Padua: CEDAM, 1947 (2nd ed.) Pp. 215. \$2.00.

Morelli, one of the leading authors of the Italian School, founded by Anzilotti, gives in this book a general theory of international law and a somewhat new system. He starts from a sociological point of view of considering the task of international law to be the settlement of the international conflicts of interests of the sovereign states. His theoretical starting-point is the problem of the foundation of international law. Then follows a discussion of the sources of international law, of the categories of norms of international law, of the relation between international and municipal law and, finally, of the subjects of international law. The book shows in a superlative degree the virtues of the Italian School: strictly theoretical, non-political character of the work, full knowledge and use of all the literature in the great languages.

There are extremely interesting and stimulating passages in this book. Thus, the discussion of the change of international norms, of the necessity of creating a law of peaceful change, if one wants to abolish war, since one of the functions of war is exactly the forceful change of the law in force, in the absence of an international legislator. Thus the highly interesting discussion of *jus cogens* and *jus dispositivum* in international law (pp. 64-70), the discussion of the coming into existence of a sovereign state, particularly in connection with an international treaty, "creating" a new sovereign state, the discussion of the continuity, the legal identity and the extinction of states.

In many respects the author follows Kelsen's doctrines: thus, the "fundamental norm" as pre-supposed, as a hypothesis, together with the thesis, now abandoned by Kelsen, that the choice of the fundamental norm is arbitrary. Thus the foundation of international law in custom; treaty law is based on the norm *pacta sunt servanda* of general international law. Thus the idea that the unity of international law is a procedural one, that international law is the totality of norms created by international law-creating procedures. Thus the treatment of the problem of the recognition of states: its legal function is the ascertainment of whether a new sovereign state has, in accordance with the norms of international law, come into existence (Kelsen, now also adopted by Lauterpacht in his recent book).

Important and correct is the author's explanation of three degrees of law-creating procedures: custom, treaty and a third form (international decisions, resolutions of international organizations binding upon member

states). He rejects Triepel's distinction between "contractual" and "legislative" treaties on the theoretically correct basis of the distinction between general, abstract and concrete, individual norms. He rejects Triepel's and Anzilotti's theory of the "collective will."

But, on the other hand, the book is based in the strictest way on the dualistic doctrine of the Italian School: non-authoritarian character and strictly parity-structure of international law, absolute difference and independence between international and municipal law. It is not necessary to show once more the absolute untenability of the dualistic doctrine, which is unable to explain the positive international law, which, if logically followed to the end, must lead of necessity to the negation of the legal character of international law. The dualistic doctrine has in Morelli the character of a dogma. It forces him to fanciful theoretical constructions. "Given the complete separation of international and municipal law, we can explain only", he often states. But the question would be whether his basis is correct. A "law of coördinated persons" is unthinkable, if these coördinated persons are not in the same way subordinated to another superior law. The "equality of States" is logically thinkable only as their equal subordination to the supra-ordinated international law. Morelli admits that international law is superior to the states, that the state can have legal obligations to change its municipal law. How is that possible on the basis of the dualistic doctrine, if the two orders are entirely separate and different? Morelli's long and forced construction of "renvoi" is a poor explanation.

This dualistic doctrine leads not only to forced theoretical construction, but in some cases, to wrong results. Thus, Morelli defends the absolute non-existence and impossibility of existence of international rights and obligations of individuals. But such statement is purely dogmatic, just as the contrary statement (Scelle), that individuals are the only subjects of international law. Whether individuals are subjects of international law, valid in 1948, and to what degree, is a problem which can be solved in a theoretically correct way only by the careful analysis of the positive international law in force. From the same starting point, Morelli denies that regulations of international organs, binding upon individuals (such as regulations of the European Danube Commission or the staff regulations of the United Nations), constitute international law, and tells us that such norms pertain neither to international nor to municipal law, but to "special autonomous orders." But, then, we have arrived at a "trialistic" doctrine! It is high time that the otherwise excellent Italian School of International Law frees itself finally from its basic fallacy of the dualistic doctrine.

JOSEF L. KUNZ

• *Of the Board of Editors*

El Nuevo Derecho de Gentes. By Edgardo Manotas Wilches. Colombia: Editorial Litografía Colombia, 1946. Pp. 251.

This small volume is an effective attack upon legal dualism, "the false conception that there are distinct sources of domestic law and international law," with its disastrous consequences for the normal development of international law. For if international law rests upon nothing more than the voluntary acceptance of its obligations by the particular state, then obligations thus freely assumed may be as freely rejected. Yet this theory, the author points out, was the generally accepted theory before the first World War, and its influence is still to be felt in the extreme policies of national sovereignty asserted by many states at the present day.

Step by step the author leads us through the voluntarist theories of Jellinek and Triepel and the dualist doctrine of Anzilotti to the monist theories of Kelsen and Verdross, the doctrine of "social solidarity" of Duguit and Scelle, and the doctrines of the "natural law." He then passes to a study of the obligatory force of international law in the light of contemporary psychology and examines the work of Alfred Adler and the "philosophical irradiations" of the Adler school. Man and society are "indissolubly united," and any legal theory "which prescind[s] from the social character of man divorces itself *ab initio* from reality and leads us along false paths." Adler's analysis of the inferiority complex helps us to understand the thirst for power, the will to dominate, which has taken hold at times of states where the normal sentiment of community life has for one reason or another failed to develop.

The author then passes to some general observations upon national sovereignty, the personality of the state and the idea of the individual as a subject of international law, pointing out the resistance in Europe to the primacy of international law and the contrasting recognition of its primacy in America.

Professor Manotas Wilches has written such an interesting little volume that the reviewer can only wish that he may be induced to prepare a second edition going into his subject in greater detail and giving the student the footnote references and bibliographical material necessary to more accurate knowledge of the subject.

C. G. FENWICK

Of the Board of Editors

The New Foundation of International Law. By Jorge Americano. New York: Macmillan Co., 1947. Pp. xvi, 137. \$2.50.

The author begins with the proposition that teachers of international law are now asking whether it is right to teach students a law which is a failure. It is a failure, he explains, because it lacks an organization to guarantee it; it lacks any basis of principles of justice; it is a system built

upon moral principles different from individual morality; there has been little equity in its application; and it is now pitted against the national law of each country.

He proposes, therefore, thoroughgoing reconstruction. Part I systematizes international law under the headings of persons, property, harmful acts, war defense, and security measures against harmful acts. The persons of international law are the superstate, individuals, nations, groups or leagues of nations and international autarchies. International property includes the ocean, straits and canals, the air, land not yet appropriated by a nation, and the property of the international community; in addition, military bases, waterways, rail and other roads giving access to inland countries, and strategic industries, mines, and deposits of international value are property under the supervision of the international community. Among harmful acts are listed threats to international public health, provocation of disquiet, economic restriction, elimination of democracy, neutrality in the face of armed attack, and many others. War, intervention, aggression and self-defense are discussed in connection with security.

Part II provides international organization composed of an assembly, an executive and judicial branch. Representation in the assembly would be upon the basis of one vote for each nation, plus extra votes for the different groups which voted in each nation. Among the legislative powers of the assembly would be to approve intervention by the executive body, the democratic trend in education, international economics, etc. The judicial branch would have compulsory jurisdiction over all international disputes.

Part III discusses at some length the education necessary to arrive at such a system. The author recognizes that "international law will not be able to subsist without the support of public conscience." The system here outlined represents an extreme form of world government and the reader may be inclined to concur with the doubt expressed in the foreword that education could, within a few years, achieve the goal set in this book.

CLYDE EAGLETON

Of the Board of Editors

Revolution in Warfare. By B. H. Liddell Hart. New Haven: Yale University Press, 1947. Pp. x, 125.

In this small book, the well-known British writer on military science gives a historical and critical survey of the revolution of modern warfare, severely criticizing practically all belligerent nations.

This revolution is the outcome of two distinct factors which in their combination have led to the "total war" of today. The first factor is the technological advance of more and more destructive weapons up to the atomic bomb, radio-directed, pilotless planes, long-range rockets and more

terrible weapons still to come. This factor has brought about unlimited devastation, spread of terror, in a word, a return to barbaric methods.

The second, and more important, factor is the change of the character of warfare: general compulsory military service, doctrinal and ideological fanaticism (the "crusade"), replacement of a limited war-objective as a means of settling an international dispute by an unlimited war-objective (unconditional surrender, annihilation of the enemy). Total war consists of unlimited methods (unlimited devastation, regardless of post-war consequences) plus unlimited aims.

Certainly, abolition, prevention and stopping of wars through international organization is the highest goal. But as its achievement is far away, return to humane warfare (limited methods, limited objectives), a new regulation of the laws of war by a mankind returning to its senses is imperatively demanded. This writer, who in 1934 ("Plus de lois de la guerre!", *Revue Générale de Droit International Public* (Paris, 1934), pp. 22-57), strongly warned against the fashionable tendency of neglecting the laws of war, and strongly urged their new regulation, is in full accord with the author's thesis.

La Navigazione Aerea nel Diritto Internazionale Generale. By Mario Giuliano. Milan: A. Giuffré, 1941. Pp. 303.

This book, published in Italy in 1941, is an elaborate theoretical investigation into the legal status of private aircraft in time of peace and war. Whereas the bulk of the literature on this topic is nearly exclusively devoted to or based on treaty law, the author restricts himself to the task of stating the positive general international law on this subject. As usual with the Italian School, the book is theoretical, not political; positivistic, excluding all meta-juridical considerations, opposed to natural law. It makes full use of the whole literature and the practice of states, of municipal statutes and court decisions and of international treaties, insofar as they are of importance from the standpoint of general international law.

Private aircraft are defined, in conformity with the whole doctrine and practice, as aircraft which are neither military nor, if not military, destined exclusively for public purposes; they are aircraft destined for the transportation of goods and passengers, regardless of whether such aircraft are owned and/or operated by states.

The fundamental consideration is that the analogy with ships prevails, except where a special and different rule of customary general international law has come into existence.

The first problem is the legal status of the airspace. The rule of general international law, established with certainty, is that the airspace follows the legal situation of the space below and that international law excludes the acquisition of sovereignty over the airspace only. Hence, in the airspace above the open sea and above *terrae nullius* the principle of

the freedom of the air is the law; the airspace above the territory of sovereign states—metropolitan, colonial and territorial waters—is under the sovereignty of the state below, contrary to the claim for “freedom of the air” by early writers on this topic. Here the formation of a new and special rule of general international law excludes the analogy with the “freedom of the seas.” Interesting generally is the procedure by which a new rule of general international law comes into existence and the methods of ascertainment of such rule.

Private aircraft in the airspace above the open sea and *terrae nullius*, in analogy with ships, are subject only to the jurisdiction of the state of their nationality and flag.

But with regard to private aircraft above the territory of a foreign state, there is no “right of innocent passage of the air,” not even above territorial waters, as the new and special rule of sovereignty of the air has come into existence. Such right must be based on treaty or on special previous permission. As to the legal status of private aircraft which is by permission or treaty in the air above a sovereign state, the analogy with the legal situation of ships in foreign territorial waters and ports is valid.

As no special customary rule of international law as to the legal situation of private aircraft in time of war has yet come into existence, rights and duties of neutral and belligerent states in relation to belligerent and neutral private aircraft are governed in all details by the analogy with the law of maritime warfare and maritime neutrality, and not by the laws of warfare on land, as Holland insisted in the Commission of Jurists on Revision of the Rules of Warfare at The Hague in 1923.

JOSEF L. KUNZ

Of the Board of Editors

Tratado de Direito Diplomático. By Rubens Ferreira de Mello. Rio de Janeiro: Ministério de Relações Exteriores, 1948. 2 vols. Pp. 458, 351.

A distinguished Brazilian diplomat here seeks to give us a survey of diplomatic practice and procedure, chiefly as pursued by the Foreign Office of his own country. It is a comprehensive work, including a discussion of every phase of diplomatic activity, accompanied by samples of the various documents in most frequent use in international intercourse. He thus puts at the disposal of Brazilian students a very complete picture of the technique of diplomatic representation, drawing his illustrations largely from the records of the Foreign Office of Brazil. While the volume has thus a distinctly national character, it contains much that is of interest to other than Brazilian students who are not to be deterred by the Portuguese language.

What is the relation of diplomatic law to international law? If its basic principles are part of international law, as they obviously must be, at what point do the numerous detailed rules of diplomatic law cease to be

rules of international law and retain only the character of custom and usage lacking the obligation of a rule of law? The line is not easy to draw and the author wisely avoids drawing it. His concern is rather to set forth established practice in a field in which, perhaps more than in any other, nations have on the whole been careful to follow precedent and to abide by tradition without inquiry into the precise legal obligation it entails.

While the author makes no claim to originality in dealing with a subject which does not lend itself to theoretical discussion, a number of his chapters are of special interest in view of the changes that have taken place of recent years. The second World War raised questions of diplomatic representation of absentee governments and of the representation of belligerents by neutral states. Civil strife in a number of countries raised the point of what the author calls the "indivisibility" of diplomatic representation. The existence of war raised questions of privilege of communication and freedom of transit and of the immunities of the ambassadors of belligerent states in countries occupied by the enemy. A chapter dealing with diplomatic asylum is of particular interest in that it gives the texts of the two inter-American treaties and the special instructions of the Government of Brazil to its foreign missions on the subject. An appendix gives the texts, in Portuguese, of a number of Brazilian and international documents, including the London Convention on the Privileges and Immunities of the United Nations.

The author is to be congratulated upon his contribution to the legal literature of his country, already so rich in scholarly works in the field of international law.

National Self-Determination. By Alfred Cobban. Chicago: University of Chicago Press, 1947 (rev. ed.). Pp. xvi, 186. Index.

Professor Cobban is to be commended upon his courage in attempting an analysis of one of the most difficult problems of international law, if, indeed, not the most difficult. What are the elements that constitute a state to which the characteristics of sovereignty and independence are to be attached? To what extent is the right of self-determination one of these constituent elements? How far is it logical and practical for the international community to bring its authority to bear in the solution of the ever-increasing demands of minority groups for separate statehood? Can, indeed, the problem of self-determination be reduced to general rules that could be given the authority of law in the international community? If the author does not give a definitive answer to these questions, he throws much light upon them and in doing so dispels many illusions that have clung to the magic phrase of "self-determination."

The author begins with an attempt to "discover how national self-determination has operated as an actual historical process," resulting in a practical demonstration of the inadequacy of the principle, which in turn

leads to a "fundamental re-examination of the theory." This is followed by an analysis of the contemporary world with the object of discovering the conditions under which the ideal of national self-determination, in its more restricted form, still retains validity. Three successive chapters on the policy of the British Commonwealth of Nations, the United States and the Soviet Union present contrasting aspects of the problem. Perhaps the most acute observations of the author are to be found in the chapters dealing with a reconsideration of the theory of self-determination, with the idea of the nation-state and with the principle of national sovereignty, where the conflicting and illogical elements in the historical concept of self-determination are brought out.

The aim of the author is to restate the issue of self-determination "in different and less irreconcilable terms." Political and economic limitations must be taken into account. It must be recognized that small states are dependent for their protection upon great Powers and dependent also upon them for their economic prosperity. This fact in turn imposes responsibilities upon the great Powers. The author concludes that, "self-determination is a matter of degree. The rights of nationality are not absolute: they vary with the internal and external circumstances of each nation." A just conclusion, as the reviewer sees it; and it can only be hoped that the statesmen of the United Nations can rise to the magnitude of the task put upon them as arbiters in the adjustment of the principles of liberty to the complex political and economic conditions in the Near and Far East.

C. G. FENWICK

Of the Board of Editors

The Conflict of Laws in Matters of Personal Status in Palestine. By Edoardo Vitta. Tel Aviv, Israel: S. Bursi, 1947. Pp. xxxii, 315.

In the course of her mandatory régime which, on May 15, 1948, was brought to a close, Palestine has produced a wealth of legal literature, out of all proportion to either area or population. Dr. Vitta's book is a fitting epilogue to that literature. The subject with which it deals—personal status—represents one of the essential elements of life and law in Palestine "Palestine legislation," Dr. Vitta writes, "may, for purposes of study, be divided into laws relating to personal status and other laws." Matters of personal status are defined in the Palestine Order in Council (Article 51) as follows: "Suits regarding marriage or divorce, alimony, maintenance, guardianship, legitimation and adoption of minors, inhibition from dealing with property of persons who are legally incompetent, successions, wills and legacies and the administration of the property of absent persons." The preëminent position given to personal status in the laws of Palestine stems from conditions which preceded the Mandate. For a period of four hundred years (1517–1917), the Holy Land was under the control of the Ottoman Turks. The cardinal rule of Ottoman legislation was the Moslem

principle that all law derives from the revelation of God to the Prophet. The consequence of that conception of law was its applicability to Moslems alone. Non-Moslems were permitted to follow their personal law.

Although, in later years, a deviation from that course could be noticed, the impress of the principle on the legal system of Palestine was marked and profound. It is reflected in the fact that, in a small country like Palestine, no less than ten religious communities were given jurisdiction in matters of personal status; and that number was not to be exhaustive. Other communities could, under the law, make application and be officially recognized. The Moslems, not included in the list, maintain courts of their own, considered as state courts. Under certain conditions, Moslems of the *sunni* rite could petition the High Commissioner for the constitution of a Special Moslem Court. In many cases, the civil courts of Palestine were given jurisdiction concurrent with that given to the courts of religious communities. For the determination of such questions as whether or not a case is one of personal status, the law has provided for the constitution of a Special Tribunal.

Inevitably, in such a state of affairs, numerous and ramified conflicts were bound to arise. Indeed, the number of cases in which such conflicts have arisen is amazingly large. It is to the study of these conflicts and to their clarification that the book of Dr. Vitta is devoted.

The author achieved his objective by first tracing historical developments back to earliest stages, in the dark ages when, after the fall of the Roman Empire, different barbarian populations came to live in Italy side by side with the vanquished Latins. From that early period we are led by the author down through the ages to present days. Against that background Dr. Vitta presents to us a logical classification and a scrutinizing analysis of legislative enactments and judicial decisions on the subject. Thus, the ten chapters of the book bring order into what would otherwise be confusion, and shed light on what would otherwise be obscurity.

The book is preceded by an enlightening foreword, coming from the pen of Norman M. Bentwich, Professor of International Relations at the Hebrew University of Jerusalem, formerly Attorney General of Palestine. It is followed by an appendix containing extracts from the Mandate, from the Palestine Order in Council and from Ordinances and Rules.

Palestine finds herself, at the present time, in a state of transition. The Mandate is gone and so is the Mandatory. In the wake of the United Nations Partition Resolution of November 29, 1947, a state, known as Israel, has been established in part of Palestine. Up to the writing of this note, the new state has been accorded recognition by fifteen nations, including the United States of America and the Union of Soviet Socialist Republics. It is difficult, if not impossible, to predict the future course of legal development in what was hitherto known as Palestine. Whatever that course may be, the book of Dr. Vitta is destined to become an indis-

pensable tool of immeasurable value to the legislator, the judge and the legal practitioner alike.

HAIM MARGALITH

New York City-Jerusalem

The United States and China. By John King Fairbank. Cambridge, Mass.: Harvard University Press, 1948. Pp. xiv, 384. Maps. Index. \$3.75.

Notwithstanding its title, Mr. Fairbank's book is really more of a dissertation on the socio-economic structure of Chinese society and its bearing upon politics and international relations than a critical analysis of the entanglements, motivations, and dilemma of American policy vis-à-vis China. Of the total fourteen chapters, almost thirteen are concerned with the social and political forces at work in the Chinese body politic and only one deals specifically with Sino-American relations. Be that as it may, however, the work is a vivid dissection of the underlying factors affecting the impending social change in China. The publication of this work signalizes that American scholarship in the field of Chinese studies is approaching maturity and sophistication, for it transcends the traditional "inspirationalism," which uncritically paints a halo around Chinese life and culture as a whole, and the passionate political evangelism which seems to have characterized much of the writings in recent years.

The main theme of the book is that American policy towards China must not be obsessed by considerations of power politics (p. 3), nor should it be dictated by purely doctrinaire anti-Communism (p. 310). As Chinese society is essentially different from American society, the author maintains, American policy must take account of the processes of social change through which the Chinese people are now passing. From a purely theoretical standpoint, it may be a question for academic doubt whether in a given circumstance foreign policy should be postulated upon considerations of promoting or facilitating the aspirations of a downtrodden people in exercising the right to re-design their social and economic life. As a matter of reality, however, diplomacy, whatever be the sentimental predilections of the international statesmen, has seldom been motivated by lofty altruistic ideals or scientific rationalism. In the final analysis, international politics are still fettered by such seemingly archaic concepts as balance of power, advancement of paramount national interest, and demarcation of spheres of influence. If this depicts accurately the world of the so-called post-war era, it would seem naïve to regard Chinese internal developments as a purely Chinese affair. The truth is that any adjustment of the power relationship between the two blocs tends to have a decisive influence upon the shaping of things from Chang-chun to Ankara and from Tokyo to Athens. The tragedy of the China situation, however, is that, whereas the widening schism between the East and the West has the apparent effect of intensify-

ing the civil strife, unity of objective among the Super Powers did not always serve the best interest of the weaker ally, as the agreement reached at Yalta has so eloquently demonstrated. No discussion of this secret understanding is found in Mr. Fairbank's book.

On the much debated question of the relationship between Soviet Russia and the Chinese Communists, the author is of the opinion that there is "little chance of detaching the Chinese Communist revolution from its Marxian nor, therefore, from its Russian connection. Mao Tse-tung may have his own special brand of Marxism but it is still firmly in the Russian camp" (p. 335). While he asserts that judging from the experience of the West, the Chinese Communists "must in the last analysis stand ready to sacrifice the interests of China to those of Russia, presumably on the theory that the Chinese people are less important than international Communism as a whole" (p. 272), he also believes that one of the mainsprings of strength for Chinese Communism is its "genuine Chinese patriotism" (p. 334), and that the Communists "offer a consistent program adapted to Chinese conditions" (p. 266). The logic is not readily apparent.

As to the direction which American policy toward China should properly take, the author suggests that American strategy must be to: (1) maintain China's national independence; (2) champion the cause of liberalism; and (3) give economic aid for purposes of agrarian reform as an alternative to peasant rebellion (p. 335). About the soundness of these broad objectives, no one who is faintly familiar with Chinese affairs would dispute. There remain the questions of what constitutes Chinese liberalism and who are the liberals, which deserve close examination. Being a professor, Dr. Fairbank perhaps naturally pins great faith in the new intelligentsia of China; he points proudly to the fact that out of 200 professors in three leading universities in North China, 170 of them had received advanced training abroad, and among the 170 no less than 100 are holders of doctors' degrees from American universities (p. 280). In paying homage to this new intellectualism, one must not forget that many reactionaries whom Mr. Fairbank today so severely censures have actually risen from the very same technical professions which were only yesterday hailed as fountainheads of liberalism and enlightenment. It is a grave question indeed if "a circulation of the élits," to borrow Pareto's words, would fundamentally solve the political and economic anomalies of modern China. What assurance is there that a new ruling group will not degenerate into the same pitfalls as have engulfed their predecessors in bearing a share of the odium of misgovernment? Almost two centuries ago, the high-minded author of the *Spirit of Laws* voiced the injunction that "If I knew of anything which was useful to my family and which was not so to my country, I should try to forget it." In the same vein, an English sage, Jeremy Bentham also said: "I would have my dearest friend to know that his interests, if they come into competition with those of the public, are as nothing to me. Thus will

I serve my friends—thus would I be served by them. Has a man talents? He owes them to his country in every way in which they can be serviceable."

Short of any such moral, nay, spiritual regeneration, the scholar-official class of China cannot hope to retain for long the leadership of the nation or the acquiescence of the traditionally mute populace. The alternative the reviewer abhors to fathom for the future.

POELIU DAI

Washington, D. C.

The Political and Legislative History of Liberia. A Documentary History of the Constitutions, Laws and Treaties of Liberia from the Earliest Settlements to the Establishment of the Republic, a Sketch of the Activities of the American Colonization Societies, a Commentary on the Constitution of the Republic, and a Survey of the Political and Social Legislation from 1847 to 1944. By Charles Henry Huberich. With Appendices containing the Laws of the Colony of Liberia, 1820-1839, and Acts of the Governor and Council, 1839-1847. New York: Central Book Co., 1947. Vol. I, pp. xxii, 850; Vol. II, pp. 884. \$30.00.

In a foreword likely to be remembered as one of Roscoe Pound's brief classics in comparative legal history, this work is highlighted in three aspects. The first is the "social, namely the conditions which led to the project for colonization of free Negroes from the United States on the west coast of Africa; the conditions which differentiated the American project from other colonizations carried on by other nations. . . . Another is juristic . . . the position of the dominant organization behind the project and of the government it set up before the State [Maryland] which granted the charter to that organization, and before American constitutional law, and the standing of what that organization did before international law. . . . The third point . . . how a stable and enlightened republic grew out of early struggles. . . ."

While the bulk of Huberich's tremendous depository of constitutions, laws, and treaties covers the early stages of Liberia, Chapters XXIII, XXIV (Nationality and Alienage), and XXV (Organs of Government, Special Topics) carry certain developments into its modern rubber-cushioned period. There are also reproduced the "Text of the Amended Articles of the Constitution" as of 1944 and pending amendments to be voted on in the 1951 election.

Liberia's international, political, and economic position, while indicated in some of its major developments, could not be studied satisfactorily on the basis of the Huberich volumes. League of Nations publications would have to constitute a major source in these respects. The "Foreign Affairs" rubric of Huberich's bibliography (Vol. II, pp. 1690-1693) presents valuable additional data. A number of well-established commentary observations in the volumes suggest unexpected and interesting features in Liberian

international affairs, such as that it is customary for the Legislature to permit the President of Liberia, by an act or resolution, to go abroad on official business. An enactment with far-reaching powers authorized the President (Acts of 1942-'43) "to visit any foreign country during the present international crisis if in his judgment the interests of the Republic required such visit" (Vol. II, p. 1125).

Students of social and economic history and analysts of international relations are richly rewarded by the presentation of many documents difficult of access, particularly for the early period. Often the material is interspersed with extensive biographical data and other significantly new historical points. The encyclopedia character of the work, which comprises a total of nearly 1800 pages, is enhanced by a carefully prepared table of contents, an elaborate bibliography of printed as well as manuscript sources (Vol. II, pp. 1668-1703), tables, subject and case indices, maps and other illustrations.

Obviously the by-product of a learned international lawyer, the descriptive and analytical part of these volumes reflects at times the accidental emphasis of practical needs and not as fully the scholastic concern of the author while he was professor of constitutional and comparative law at Stanford University and elsewhere. His death in 1945 had left the manuscript nearly complete, but its posthumous edition shows the absence of the master's hand as compared with Huberich's other publications.

ERNST CORRELL

The American University

Struggle for Germany. By Russell Hill. New York: Harper & Bros., 1947. Pp. 260. Index. \$3.00.

In this well-written and concise treatment of the postwar situation in occupied Germany, Russell Hill, a Berlin correspondent for the *New York Herald Tribune*, presents a worthwhile analysis of the problem that is Germany. His treatment will be of particular interest to students of international relations, since he uses the international scene as a constant frame of reference. Although Mr. Hill devotes the bulk of his book to a detailed and accurate description of conditions in Germany and the manner in which United States policy has been effectuated, he keeps before the reader at all times the fact that the German problem today has resolved itself into a basic struggle between the Western Powers and Soviet Russia. His prognostications of the contemporary difficulties are accurate and timely.

In dealing with the major problems faced by American occupation authorities in attempting to achieve occupation objectives, Mr. Hill briefly but adequately discusses the chaos and destruction encountered after Germany's defeat; the apathy of the German people; the breakdown of the German economy and Russian and French intransigence with respect to the level of industry; and Germany's economic rehabilitation. The relationship

between food and democracy is vividly described, as are the general economic problems faced by the occupants. The development of American occupation policy is treated a little too summarily. Mr. Hill considers that our policy with respect to Germany was not finally formulated and integrated with our over-all foreign policy until Mr. Byrnes' Stuttgart address in which he announced that America was ready to speak out openly in support of its policy.

In an excellent chapter entitled "This Nazi Thing," Mr. Hill presents a very brief survey of the political conditions which led up to the advent of the Third Reich, preliminary to his discussion of denazification. It should be observed that the author's brief discussion of denazification is one of the ablest treatments of the subject which has yet been found in the growing literature on the occupation of Germany.

By far the outstanding feature of this book is its treatment of the international situation which presently centers around Germany. In connection with the evolution of quadripartite policy, Mr. Hill points out that "Every nation, in evolving its German policy, kept its eyes on the developing struggle for power between east and west as much as on the body of the prostrate enemy of yesterday. In east and west, the statesmen were thinking in terms of two worlds, and not in terms of the one world to which all those who supported the United Nations organization were supposedly committed."

From the very outset of the occupation, there have been two problems. The first required the Allies to determine what they could do to make certain that Germany would never again be strong enough economically and militarily to threaten its neighbors and unleash a third world war. The second involved the relations between the victorious Allies and particularly the clash between western democracy and Soviet totalitarianism. Enlarging upon the second problem, the author observes: "Germany, because of its geographical situation, its resources, its industrial potential, was bound to become the European focal point for the clash of these ideologies and national interests. Thus, the problem of what to do about Germany became complicated by the additional problem of what the Allies were going to do about each other, of how their relations would be affected by what they did in Germany, and what the Germans did."

The basic problem faced by the Allies was the fact that they had to make peace with each other before they could make peace with Germany. At the time of the Potsdam Conference, the war with Japan was still in progress and conflicts among the Allies were not as openly acknowledged as they were subsequently thereto. Vital issues which had been left unsettled at that meeting are still plaguing the nations concerned. In pointing out that the Potsdam Conference not only failed to solve the major problems but actually created new ones, Mr. Hill says: "The clue to Potsdam, so far as the Americans were concerned, was that it fell between two periods

in American foreign policy. The war policy was being reconsidered; the postwar policy had not yet been developed. It is understandable that we should have failed to insist on a settlement of basic issues, leaving them instead to future negotiation."

Underlying the various difficulties involved lay the fact that the four occupying nations approached the task of governing and planning the future of Germany with opposed political and economic philosophies. Each nation saw in the Germany-to-be a small edition of itself. Thus, Soviet Russia envisioned a dictatorship of the proletariat or a workers' state; Great Britain foresaw a social democracy; the United States pictured a capitalist system in a land of free enterprise. France's major concern was not so much in the form taken by the new Germany, but was rather directed at keeping Germany weak and divided.

Following this theme, Mr. Hill presents what is probably the best and most lucid available explanation of why the occupation has developed the way it has and how the present *impasse* came about. Summarizing his position, he says:

The western and eastern worlds were split by fundamentally divergent conceptions about freedom and the rights of the individual. When the representatives of these two opposing philosophies came together to accept joint responsibility for ruling Germany, they had to decide on what system would prevail there. It was agreed that Germany was to be a democracy. That agreement was soon seen to be illusory because there was no common definition of democracy; . . . to the western nations, democracy meant free elections, freedom of speech and religion, preservation of the traditional rights of man. To the Russians these were merely the forms of democracy and to the idea of a "formal" democracy they proposed their conception of a "true" democracy wherein the workers or their representatives controlled the state. Germany was viewed as an important strategical position, the Germans became the subjects for an ideological struggle. If there was agreement that Nazism must be destroyed in the German mind, there was disagreement about what should supplant it.

In concluding his work, Mr. Hill sets forth his proposals for a German settlement, emphasizing the urgency in arriving at a settlement as rapidly as possible, because of the danger that a breakdown of quadripartite government will undoubtedly result in an integration of Eastern Germany with the Soviet economy. His main proposals are: a plan of inspection and control to guard against German rearmament; encouragement to German industry to produce as much as possible for peaceful purposes in order to make possible a rapid payment of reparations and to raise living standards in Germany and Europe; a politically decentralized but unified Germany including the Ruhr and the Rhineland and a part of the territories now under Polish administration; and, finally, abolition of the occupation zones, removal of the armies of occupation and their replacement by control commissions reinforced by an international constabulary.

The basic difficulty with these proposals lies in the fact that they constitute an oversimplification. Eastern Germany has already been integrated with the Soviet economy. The Western Powers have interpreted the Potsdam Agreement to require reparations out of capital equipment and not out of current production. Quadripartite operations have ceased to all intents and purposes since this book was written, and under the terms of the agreement for the proposed state of Western Germany, the country will be partitioned unless the Russians are willing to come in, and the Ruhr will be placed under an international authority. Furthermore, it is quite improbable that those areas which are now under Polish administration will be returned to Germany in the near future, if ever. In the last analysis, it is difficult to see how any sort of unification, economic or political, can take place in Germany as long as the ideological struggle between the Soviet Union and the Western Powers continues. It is probably safe to say that until the east and the west can resolve their differences in a peaceful manner, the struggle for Germany will continue.

ELI E. NOBLEMAN

Washington, D. C.

Europa und das römische Recht. By Paul Koschaker. Munich and Berlin: Biederstein Verlag; 1947. Pp. xii, 378. Nachträge. Index. Paper bound. RM 12.50.

Professor Schiller of Columbia University has recently, in the *Yale Law Journal*, described this book as "destined to become a classic." This is certainly no overstatement. Yet the book is not classical. It was not written, as one may be led to believe from its title, to demonstrate any inherent harmony between "Europe" and the Roman law; it rather destroys common legends concerning both. The purpose of the excellently written treatise—a rarity in Germany for the past twenty years—is to show the role that the Roman law has actually played in Europe. The author has accomplished this in the main, at least if we follow his circumscription of "Europe." It is not necessary, however, to ponder over the author's justification in setting up a limited meaning of "Europe," for in fact his book deals with Roman law in Italy, France, Germany and Austria, and England. These are the countries where Roman law was either received *in toto* (Italy and Germany), or received to a large extent (France), or attempted to be introduced, but rejected (England).

Why was Roman law received at all, and why not everywhere, the author asks. The answer is not, as many believe, because Roman law was "better," on a higher level, than the law of the receiving countries at the time of the reception. The local laws of the German and Italian principalities in the late Middle Ages were not inferior to the law as expounded in Justinian's Digest. This is particularly true of the legal system of the Langobards

with their important court of justice at Pavia as well as of that of the Saxons. The actual reason for the reception, according to Koschaker, is twofold: The Empire idea and the lack of a strongly organized body of lawyers of high social standing both in Italy and Germany. The author attaches more weight to the second reason. The Reich idea, it is true, gave the new law a rationalization. Justinian's law was the law of "The Emperor" and in those days that was enough to make it the Holy Roman Empire's law. However, it is precisely the same reason that retarded the reception for example in France. Because the Roman (Justinian) law was identified with the Holy Roman Emperor's claim for universal sovereignty, which the French kings refused to recognize. Nor was the attitude of the Pope and the Guelfs sympathetic toward the Empire. England, on the other hand, had but little to fear from the German Empire and yet the repeated attempts, since Vacarius, to introduce Roman law into England were beaten back. By whom? Not by the kings. Indeed the Tudors looked upon Roman law as something from which they might derive additional arguments for strengthening their royal powers. It was the lawyers, who, by the time of the first impact of Roman law, had developed a legal system of their own, which, good or bad—Koschaker thinks it by no means inferior to that of the Romans—was theirs and whose surrender would have meant to relearn everything from the bottom or to retire from the legal profession, neither of which the British lawyers were willing to do. Germany, on the other hand, being the last country at whose gates the Roman law knocked (Koschaker scorns the legend that the reception of the Roman law was essentially originated by or in Germany and rightly points out that it came to Germany only 200 years after it had arrived in Italy, France, or—unsuccessfully—in England), could not resist the onslaught, for the Empire, Germany as distinguished from its constituent territories, had no common law and no *Juristenstand*. There was no centralized or organized class of lawyers who would have fought off the new law. Thus politically the *Corpus Iuris* was received *in complexu*, in its totality, as the law of the realm, although actually much German law continued to remain in force. France, on the other hand, stood in the middle of the road. It never received the Roman law *in complexu*, for it did not consider it as the law of the kingdom. But in France, too, there was at that time lacking a body of trained lawyers, attached to a central government, that could have resisted the reasonings and rationalizations of the new type of jurists that came in from Italy or from domestic universities where the new *mos Italicus* was taught. Koschaker is at his best where he reviews the history of the attempted reception in England and compares the training of lawyers in that country with that in France, Germany, and Italy at the time of the reception.

Koschaker calls the laws of Rome, of France, of England, and also those of pre-reception Germany and Italy, a *Juristenrecht*—lawyer's law. This

term he uses in opposition to both *Volksrecht* (people's law) and professor's law. The existence of a *Volksrecht*, supposed to be common to all *Volksgeossen*, has been an intellectual part and parcel of German romantics, Germanists, nationalists, and finally of the Nazis. It has never existed, Koschaker rightly emphasizes, not even at the beginning of legal history, for especially then was the law of every people highly formalistic, sacral, and known to but a select group or caste. Nor would its existence be desirable, just as "popular medicine" would be nothing to be looked forward to in an age of specialization. With even greater vigor does Koschaker propound the statement that true law can be made, administered, and developed solely by lawyers—by practitioners and not by professors. Theoreticians can develop schools, be it in Berytos or in the Germany of the 18th and 19th centuries, but these have little to do with the law as it is actually practiced and applied.

These are remarkable words from a German university professor of international reputation! It is entirely in line with his thought that Koschaker—rightly as we think—refutes the idea, which he calls a typical German professors' idea, that there is such a thing as a "legal science," at least as far as concerns the interpretation of the existing law (the *Dogmatik*, as the Germans call it). He regrets that the word *Rechtswissenschaft* (*science juridique*, legal science) is gradually being received in other languages for subjects other than history of the law or what we call jurisprudence (the science of the law).

It was the lack of an adequate lawyer's law, not of schools and professors, that made Germany helpless against the foreign Commentators. Koschaker emphasizes how they as well as their forerunners, the Glossators, and the "Pandectists" and "Practitioners" of the following centuries were chiefly jurists engaged in the practice of law, which they also taught. None of the more important representatives of these schools were Germans. That changed only in the 18th century, when the school of natural law came into organized existence. They and particularly the historians of the 19th century put the German "legal science" in the forefront of the Romanists. With the coming into force of the civil code in 1900, the position of Germany rapidly declined. Koschaker maintains, and this is in accordance with the evidence, that during the last thirty years Roman law was cited more often in British court decisions than in those of the German Supreme Court. He insists that to 90 per cent of all present-day German lawyers names such as Savigny, Puchta, Jhering, Windscheid, or Dernburg are unknown. Nor could anybody conduct a good papyrological seminar simply because the students would neither be interested nor know enough Greek. This was and perhaps still is quite different in Austrian law schools, as the reviewer can personally confirm, where Roman law was strongly emphasized (maybe too much) and Professor Wlassak's *Papyrus Seminar* was attended by many a student.

Koschaker's book is of course up to date in the German legal literature, which includes a lot of Nazi filth, all of which he disposes with delightful irony. He is, however, also quite at home in the more recent Anglo-American treatises both on common and Roman law. He notes that Roman law is studied to a greater extent than in Germany in most non-German countries including even the United States, whose Riccobono Seminar of Roman law he repeatedly mentions and probably overrates.

The learned author concludes with the observation that the Roman law has played the rôle of being one of several factors for the creation of a common European culture. While it did not unify Europe politically—no system of law alone could ever do that—it contributed to its unity of civilization and to the creation of a science of international law. Even if the time should have come to put it into a museum, as a piece of history it deserves to be studied by future generations.

REGINALD PARKER

University of Idaho

NOTES

The Constitutions of the Americas. Editor-in-Chief, Russell H. Fitzgibbon; Associate Editors, Cullen B. Gosnell, William A. Strozier, and William B. Stubbs. Chicago: University of Chicago Press, 1948. Pp. xx, 847. \$10.00. I have long felt the need for a convenient collection of the constitutions of the Americas. I used to rely on the useful collection edited by José I. Rodríguez, published about forty years ago; but with subsequent changes so numerous, it has long since become out of date. It was supplanted by the excellent collections in Spanish by Altamira, Lazano y Mazón, and Pasqual, and by the collections in French by Dareste and Mirkine-Guetzévitch. A collection in English was lacking, however. The serial collection published by the Pan American Union was not complete and not kept up to date. Hence the joy with which I received this volume, as skillfully projected as it is admirably executed. It should find place in every well-equipped American law library, along with the volume of the Federal and State Constitutions of the United States published by the New York State Constitutional Convention in 1938 and the volume of British Empire Constitutions published by the British Foreign Office in the same year.

Here are the texts, or original English translations, of the national constitutions of twenty-two American States, in force on January 1, 1948. Each of them is preceded by a valuable *précis* of the constitutional history of the country, and an introduction to the volume presents a synthesis of constitutional development in Latin America. A useful bibliography on Latin American constitutions is appended, and the ingenious index (23 pages) will enable a scholar to thread his way through the content of the instruments themselves.

Current deprecators of the horse-and-buggy days may be able to derive some satisfaction from the extreme modernity of most of the present-day American constitutions. In fourteen of the twenty-two states, the current constitution was adopted after 1930, and in five of them after 1940. In

five countries the present constitution survives from the second half of the nineteenth century—in Argentina from 1853, in Canada from 1867, in Costa Rica from 1871, in Colombia and El Salvador from 1886. Only one of the twenty-two constitutions has lived out a hundred years; placed in this galaxy, the United States Constitution of 1787 seems even hoary.

One can find a large amount of uniformity in the constitutions of American states; twenty-one of them establish governments which are republican in form and almost as many of them contain elaborate declarations of human rights. Yet there is diversity too. Nicaragua has the distinction of having the longest of the Latin American constitutions, its 352 articles covering forty-seven pages in this volume; Paraguay seems to have the shortest constitution, its ninety-six articles covering but thirteen pages. The United States Constitution is the most parsimonious in its numerotation, with but six articles and twenty-one amendments covering here only sixteen pages. Nor do the American states follow the same pattern in revising and amending their basic instruments. The editors find it "misleading" (p. 298) to attribute to the Dominican Republic as many as twenty-four constitutions. Yet apparently Ecuador can boast of fifteen constitutions in 118 years, and Peru of seventeen in 127 years. Alongside such records for keeping up with the times the United States must be satisfied with its scant two constitutions in 172 years.

It is gratifying to have the editors' assurance that successive editions of this volume, registering subsequent changes, may be anticipated.

MANLEY O. HUDSON

Of the Board of Editors

And Call It Peace. By Marshall Knappen. Chicago: University of Chicago Press, 1947. Pp. 213. Index. Appendix. \$3.00. *And Call It Peace* is an important and accurate history of the beginnings of the efforts by American Military Government to reorganize the German education system and to inculcate the principles of democracy into some forty million Germans who had never known a democratic way of life.

The very nature of this task made it quite apparent that the best possible talent in the form of outstanding educators and administrators would be required in order to even approach success in this undertaking. Professor Marshall Knappen, Professor of History and Political Science at the University of Michigan and formerly Deputy Chief of the Education Section and Chief of the Religious Affairs Section of the Office of Military Government for Germany (U. S.), presents an interesting and most worthwhile account of the tasks undertaken in the face of almost insurmountable obstacles. He tells the story of how a small group of educators attempted to carry out their all-important duties, hampered by a vacillating foreign policy and lack of public support at home, and by the constant harassing tactics of a poorly-oriented military hierarchy in the field.

At the outset there were three schools of thought with respect to the manner in which the German people could best be reoriented. One group (referred to by Professor Knappen as those who believed that the Nazi spirit could be exorcised by magic) felt that all that was necessary was to skillfully rewrite the textbooks, bring into Germany democratically-minded teachers from other countries, and revise the control system in German schools. A second group maintained "that for all practical purposes the average German was incurably aggressive. If he had the sinews of war available, he would inevitably employ them to attack his neigh-

bors. Therefore, the only way to handle his case was by the exercise of superior force."

The third group consisted of the professional students of the problem (including the author), who had the responsibility for doing the actual work in the field and on the ground. They were unable to offer any simple or easy solution at all. Of them the author says: "To the disgust of their impatient fellow-citizens, these thinkers alleged that neither magic, flogging, nor any other simple and infallibly safe device would be adequate. . . . They felt that a long and difficult course of treatment was necessary. While they believed in the use of reasonable duress in the early stages of the cure, they thought that eventually the confidence of the patient must be won and held in such a way that he would be willing to cooperate in the treatment." Because of this point of view, this group felt that the contributions made along these lines by any non-Germans must be called "reorientation" rather than "re-education." "They thought that outsiders could only give, at most, new ideas of a general nature. The actual and detailed work of re-education would have to be undertaken by the Germans themselves. . . . They recognized that at best this course of treatment would be long and arduous and that it involved the taking of certain risks by the attending experts."

At the outset of their work, this latter group operated on the theory that the Atlantic Charter stated the basic American policy which was to be followed. Accordingly, provisions were made to re-establish schools and theological seminaries as quickly as possible; to eliminate Nazi teachers and to train new, promising Germans even if they had formerly been housewives with no teaching experience; to encourage the formation of church and community youth groups on a voluntary basis; and generally to create an atmosphere conducive to reorientation. Their awakening was a rude one. Constantly hampered by the Morgenthau Plan and the opposition of the military authorities on the one hand, and the internal conditions on the other, the outlook was very discouraging. Among the most serious obstacles to be met in actual operations were teachers, textbooks and school buildings, without which it was virtually impossible to effect a reorganization of the German school system and to reopen the schools at all levels.

The Nazi textbooks had been so permeated with propaganda and were so doctrinaire as to be entirely unusable. Books in use in other German-speaking countries, such as Switzerland, were found to be too local in point of view and character, although they satisfied the requirement of democratic orientation. Textbooks written by Americans or Englishmen created problems of translation. Finally, textbooks written by German refugees were ruled out because it was felt their use would only tend to inflame German nationalism. Accordingly, the authorities decided to use pre-Nazi German textbooks, although the difficulties of locating them and reproducing them in sufficient quantities were very great. The problem of recruiting a sufficient number of competent, anti-Nazi teachers presented another serious difficulty. The author's treatment of the American denazification program as it affected re-education and reorientation is most illuminating, and the major weaknesses in this program are adequately and effectively dealt with. Most of the school buildings were used by the tactical troops as billets or headquarters. Because Military Government was subordinate to the tactical forces during the combat and part of the post-surrender phase, it was virtually impossible to free these

buildings for use as schools. As a result, progress in reopening the schools was further hampered.

Despite all of these as well as other difficulties, the re-education program was, at least, partly successful. By the spring of 1946, schools were functioning throughout the United States Zone, youth activities were begun on a fairly large scale, and adult education had been revived in the major cities.

Dr. Knappen spends considerable time castigating the regular Army officers and the system under which they operated, in a chapter appropriately entitled "The Brass Plays with Magic." He excuses the inclusion of this material by remarking that the Army system provided the framework for the reorientation program and was a major factor in determining the effectiveness of the work done. Although he admits that the basic planning done in the War Department was competently handled, he points out that the responsibility for executing these plans in the field lay in the hands of regular Army officers, who the author feels were men of mediocre abilities, trained primarily in large-scale destruction, but "baffled by the problem of devising and carrying out a constructive program of almost any kind." As a result, "However good the original Washington plan . . . might be, if in the field its implementation was intrusted to men of this caliber, its chances of succeeding were obviously not good."

In two final chapters, Dr. Knappen deals quite properly with the effect of the general lack of interest in the problems in Germany on the part of the American people. In this connection, he points out that they never received adequate information with respect to the German situation and that is one of the reasons which impelled him to write this book.

Considered as a whole, this is an excellent book, containing much basic and worthwhile information. To the extent that Dr. Knappen's stated purpose in writing it is to awaken the American people from their indifference, it is doubtful whether he has been successful so far as the average American is concerned. His criticism of the Army and its way of doing things is undoubtedly justified, but unduly harsh. As long as he confines himself to the system, he is on safe ground, but his denunciation and castigation of the officers who were the result of this system is overdone. The tasks to be performed were entirely civilian in nature and never should have been entrusted to men such as those under whom specialists, such as Dr. Knappen (and the reviewer), were required to work. Finally, the author seems to have a tendency to oversimplify the ultimate solution. For example, he states that "to give the German a job at steady wages which would take his mind off parading and putsching" is the one thing needed to achieve effective denazification. It is quite probable that if the German could be given a job at steady wages, it might help to redirect his thinking. However, this, too, might be considered doubtful in the light of Germany's past. Furthermore, the problem of how to assist the German in obtaining a job at steady wages is one of the greatest problems now facing occupation authorities in view of the economic chaos within Germany and the world chaos with which Germany is surrounded as a result of the East-West struggle.

ELI E. NOBLEMAN

• *Washington, D. C.*

Gerechtigkeit fuer Oesterreich! Rot-Weiss-Rot-Buch. Erster Teil. Vienna: Verlag der Oesterreichischen Staatsdruckerei, 1946. Pp. 224. The author and publisher of this Red-White-Red-Book is the Government of the Austrian Republic. The purpose of the book is—to quote and to translate the official author—“to describe the fate and the attitude of Austria during the 12 years of the Third Reich and to justify the Austrian request to be regarded and treated as a ‘liberated nation’ according to the Moscow declaration.” While we have to stress the fact that only the first volume of a very important publication is submitted to the judgment of the world, very interesting trends may be discovered already.

The preface depicts vividly Austria's plight when she faced Hitler's aggressive policy, and especially her abandonment by the Powers of Europe in the tragic days before and during the “Anschluss.” The majority of the Austrian population never was national-socialistic. The official author uses the wording: *niemals in der überwiegenden Mehrheit seiner Bevölkerung* (never as far as the overwhelming majority of the population is concerned). The skeptic might ask: “And what about the simple majority?” (*Einfache Mehrheit!*) A dangerous wording, which should not have occurred in an official publication.

An excellent time-table showing developments from 1933 to 1939 presents the historical developments and it is thus that the first part of this first volume starts. Interesting photostats of important documents illustrate the publication. Statistical tables show the ridiculously small numbers of the underground Nazis during the Dollfuss-Schuschnigg era, while every foreign guest—and every Austrian—at that time certainly gained the impression that the Hitlerites formed a very powerful—legal or illegal—party.

Of highest interest are the parts of the publication dealing with Nazi terrorism and the murder of Dollfuss. The publication does not tell us anything about Dollfuss' fateful decision to crush the Socialist Party in February, 1934, whereby the most powerful potential enemy of Nazism was destroyed. On page 51 it is mentioned that the French Foreign Minister, Barthou, sympathized with Austria's idea to ask for the intervention of the League of Nations against Germany's interference on February 13, the clever Nazi maneuver which consisted in expressions of friendship for the fighting Socialists in their Dollfuss-beleaguered workers' settlements.

Our official author took pains to print not only the famous treaty of July 11, 1936, whereby Austria slipped into the German sphere of interest, but also the unimportant comments of the Schuschnigg Government on that treaty. Unfortunately, the official author forgot completely that Kurt v. Schuschnigg, while still Chancellor, published a book *Dreimal Oesterreich* (Three Cheers for Austria), in which a stunned public could read that very important secret articles were added to the apparently harmless treaty of July 11th. The exciting documents concerning the immediate events of the Anschluss form a colorful close of the first part of the volume.

The second part is called “Austria in Chains” and comprises four chapters: (1) Hitler marches into Austria; (2) The Austrians and the war; (3) Hitler destroys Austria's economy; and (4) Austria's resistance and share in her liberation. The first chapter deals with the era during and shortly after the annexation. Statistics show again that German officials were appointed to important positions in the newly-annexed country, and that their number increased beyond any proportion continuously and

fast during the years of the occupation. A special chapter is dedicated to the appeasement policy of Munich and another to the neutrality policy of the European Powers during the Anschluss crisis itself; both chapters are clever and should impress the negotiators of the Austrian treaty at Moscow. The next chapters deal with the reports of the Gestapo and sentences passed by the Nazi courts against Austrians either in Austria or in the *Altreich*.

While the reader will be impressed by the lack of true enthusiasm the Gestapo found everywhere and by the not-so-small number of martyrs who suffered capital punishment for the cause of Austria's liberation, our official author has not dealt so far (perhaps we shall read about it in the next volume) with the following questions: (1) The famous pastoral letter of the Roman Catholic episcopate to the Austrian population of March, 1938 whereby the *Anschluss* was greeted and Hitler welcomed into Austria; (2) The frightful plight and martyrdom of Austria's 200,000 Jews, who, if we are to trust the official author and his statistics, possibly could have been persecuted not only by the few Nazis, but also by many more anti-Nazi Austrians.

In connection with the second question a supplementary "test" will have to be made. In other occupied nations like Belgium, Holland, and Norway, the majority of the population did everything to hide and to assist the persecuted victims of Nazism such as active anti-Nazis, Jews, or other refugees. So far, the official author neither mentions this question nor does he offer any documentation.

With interesting evidence about the economic consequences of the *Anschluss* and vivid descriptions of the heroic fights of the resistance movement the volume comes to its close, but the Austrian Government does not, or so we hope, rest its case. That government's plea for real liberty goes to the heart, and the friends of culture in all nations owe special thanks to those Austrian workers who, against the orders of the SS and at great personal danger, prevented the destruction of the European art treasures in the salt mines near Salzburg.

This is a stimulating book, stimulating for the private reader, as well as for the official author.

ROBERT RIE

Bradley University

Die internationale Stellung Österreichs 1938 bis 1947. By Stephan Verosta. Vienna: Manz; 1947. Pp. viii, 148. This is a collection of 58 documents concerning the international legal status of Austria from 1938 to 1947, in German translation. The documents start with excerpts from the indictment and judgment of the Nuremberg Trial concerning the aggression against Austria, and go then, chronologically, from the last speech of Chancellor Schuschnigg of March 11, 1938, to the declaration of the American representative in the Committee of the Security Council of August 4, 1947, concerning Austria's admission to the UN.

The translation is very carefully done, giving critical words always also in the English original, so that the reader can judge for himself. In the introduction the author defends the thesis which is also the thesis of the Austrian Government, that the Republic of Austria remains the same state today as in 1918, that there is a legal continuity from 1918 to the present day. The German seizure of 1938 was in violation of international law. Legally it constituted only an occupation by force, not an annexation.

This occupation, it is true, completely eliminated Austria's capacity to act internationally from 1938 to 1945, but it never extinguished her international personality.

The same attitude was and is being taken in this country by scholars (Herbert Wright, 78th Congress, Second Session, House Document No. 477) and statesmen. It suffices to mention Roosevelt's speech of December 9, 1941, the declaration of Secretary of State Cordell Hull of July 27, 1942, and the Moscow and Yalta communiques.

JOSEF L. KUNZ

Of the Board of Editors

Wereldorganisatie, Wenschelijkheid en Mogelijkheid. By Aleida van Oven. Leiden: Eduard Ijdo N.V.; 1948. Pp. xv, 560. Appendix. Index. This dissertation, written under German occupation, purports to show that a world organization is not merely desirable but also possible. The author sets up a detailed blueprint for a world government with organs competent to enact rules which will be directly binding upon individuals. Thus everybody will be bound by world private and criminal law and protected by a world bill of rights (which includes the right to one's own philosophy). States will be represented in the world organization not directly but through intermediate regional federations. Each of these federations will have its own army, central bank, and so on; each will bestow a common federal nationality on all citizens of its constituent member states.

In a postscript, written in 1947, the author recommends that the Charter of the United Nations be amended to include features of her own scheme. The United Nations should definitely bring together economically and militarily integrated federal unions instead of grouping individual states and merely tolerating "regional arrangements" (Art. 52). This would at once transform the United Nations into a fully effective world organization, solve the present conflict between the Big Two, and render the veto provision superfluous. How and why the author fails to show. She also fails to realize that we must solve the political and economic problem of how to establish such federations before we raise the legal question of how to amend the Charter accordingly. Her own country's laborious efforts to implement the Benelux union illustrates the complexity of this problem.

The author may be forgiven for having sought to escape from the harsh realities of German rule into a utopia, and even for having believed at that time that it could become a reality after the war. She should be criticized, however, for having persisted afterwards in her illusion that problems of international politics can be solved by legislating them out of existence.

FELIX OPPENHEIM

University of Delaware

Major Aspects of International Politics. Grinnell, Iowa: Grinnell College Press, 1948. Pp. 163. \$2.50. This nicely-printed little book contains five lectures given at the Grinnell College Institute of International Affairs in 1947. There is a short introduction by Dr. Joseph Dunner of Grinnell College, who directed the Institute. Professor David M. Pletcher of Knox College writes on Latin America; Professor W. L. Godshall of Lehigh University, on "Some Facets of the Chinese Dilemma"; Dr. Dunner, on "Soviet Imperialism and the United States"; Dr. R. H. Martin of

Grinnell, on "The Post-War Crisis in Britain"; and Dr. Arnold Zurcher of New York University, on "The Problem of World Government." The lectures taken together constitute a well-rounded and uniformly useful survey of the political situation and problems of the world today.

International Road to Peace: Functional Organizations. By H. A. Freeman and T. Paullin. Ithaca, N. Y.: Pacifist Research Bureau, 1947. Pp. 62. This little pamphlet, intended for popular use, contains short sketches of various international organizations, and might be of some value for an average reader if it could be read without the pacifist bias given to it. It does not seem quite fair to quote this reviewer, who believes in collective security, and then include him among "some far-sighted supporters of the League who place their reliance not on the collective security idea," but on coöperation (p. 23, footnote 70). Functional or administrative institutions are of great importance, but it is to be doubted whether thus far they have cut down national sovereignty very much (p. 5). If there is a trend toward international administration, it does not follow that plans for an enforced peace are out of harmony with this trend (p. 47).

CLYDE EAGLETON

Of the Board of Editors

Grotius: International Year Book, 1940-1946. The Hague: Martinus Nijhoff, 1948. Pp. xii, 320. Gld. 16. This volume takes up once more the series of annual volumes which have been appearing since 1913. The seven volumes which would have been published but for the war are here condensed to one, and succeeding volumes will now follow the usual annual schedule. The aim of the *Yearbook*, as announced by the publishers, is to inform the public as to the part played by The Netherlands in international events; and the current volume deals with World War II and the new international organization. While the volume is of special interest to citizens of Holland, there are a number of articles of general international interest, and the Annexes contain documents useful to the historian of the World War. Four of the contributions are *In Memoriam* articles dealing with distinguished Dutch scholars whose deaths have occurred since the publication of the last volume. An article on War Crimes and International Law surveys The Netherlands' share in the punishment of war criminals.

C. G. FENWICK

Of the Board of Editors

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TREATY OF PEACE WITH HUNGARY, 1947

The Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, India, New Zealand, the Ukrainian Soviet Socialist Republic, the Union of South Africa, and the People's Federal Republic of Yugoslavia, as the States which are at war with Hungary and actively waged war against the European enemy States with substantial military forces, hereinafter referred to as "the Allied and Associated Powers," of the one part, and Hungary, of the other part;

Whereas Hungary, having become an ally of Hitlerite Germany and having participated on her side in the war against the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and other United Nations, bears her share of responsibility for this war;

Whereas, however, Hungary on December 28, 1944, broke off relations with Germany, declared war on Germany and on January 20, 1945, concluded an Armistice with the Governments of the Union of Soviet Socialist Republics, the United Kingdom and the United States of America, acting on behalf of all the United Nations which were at war with Hungary; and

Whereas the Allied and Associated Powers and Hungary are desirous of concluding a treaty of peace, which, conforming to the principles of justice, will settle questions still outstanding as a result of the events hereinbefore recited and form the basis of friendly relations between them, thereby enabling the Allied and Associated Powers to support Hungary's application to become a member of the United Nations and also to adhere to any Convention concluded under the auspices of the United Nations;

Have therefore agreed to declare the cessation of the state of war and for this purpose to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries who, after presentation of their full powers, found in good and due form, have agreed on the following provision:

PART I

FRONTIERS OF HUNGARY

Article 1

1. The frontiers of Hungary with Austria and with Yugoslavia shall remain those which existed on January 1, 1938.

2. The decisions of the Vienna Award of August 30, 1940, are declared null and void. The frontier between Hungary and Roumania as it existed on January 1, 1938, is hereby restored.

3. The frontier between Hungary and the Union of Soviet Socialist Republics, from the point common to the frontier of those two States and Roumania to the point common to the frontier of those two States and Czechoslovakia, is fixed along the former frontier between Hungary and Czechoslovakia as it existed on January 1, 1938.

4. (a) The decisions of the Vienna Award of November 2, 1938, are declared null and void.

(b) The frontier between Hungary and Czechoslovakia from the point common to the frontier of those two States and Austria to the point common to those two States and the Union of Soviet Socialist Republics is hereby restored as it existed on January 1, 1938, with the exception of the change resulting from the stipulations of the following sub-paragraph.

(c) Hungary shall cede to Czechoslovakia the villages of Horvathjalfalu, Oroszvar and Dunacsun, together with their cadastral territory as indicated on Map No. IA annexed to the present Treaty. Accordingly the Czechoslovak frontier on this sector shall be fixed as follows: from the point common to the frontiers of Austria, Hungary and Czechoslovakia, as they existed on January 1, 1938, the present Hungarian-Austrian frontier shall become the frontier between Austria and Czechoslovakia as far as a point roughly 500 meters south of hill 134 (3.5 kilometers northwest of the church of Rajka), this point now becoming common to the frontiers of the three named States; thence the new frontier between Czechoslovakia and Hungary shall go eastwards along the northern cadastral boundary of the village of Rajka to the right bank of the Danube at a point approximately 2 kilometers north of hill 128 (3.5 kilometers east of the church of Rajka), where the new frontier will, in the principal channel of navigation of the Danube, join the Czechoslovak-Hungarian frontier as it existed on January 1, 1938; the dam and spillway within the village limits of Rajka will remain on Hungarian territory.

(d) The exact line of the new frontier between Hungary and Czechoslovakia laid down in the preceding sub-paragraph shall be determined on the spot by a boundary Commission composed of the representatives of the two Governments concerned. The Commission shall complete its work within two months from the coming into force of the present Treaty.

(e) In the event of a bilateral agreement not being concluded between Hungary and Czechoslovakia concerning the transfer to Hungary of the population of the ceded area, Czechoslovakia guarantees them full human and civic rights. All the guarantees and prerogatives stipulated in the Czechoslovak-Hungarian Agreement of February 27, 1946, on the exchange of populations will be applicable to those who voluntarily leave the area ceded to Czechoslovakia.

5. The frontiers described above are shown on Maps I and IA in Annex I of the present Treaty.

PART II

POLITICAL CLAUSES

SECTION I

Article 2

1. Hungary shall take all measures necessary to secure to all persons under Hungarian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and of the fundamental freedoms including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting.

2. Hungary further undertakes that the laws in force in Hungary shall not, either in their content or in their application, discriminate or entail any discrimination between persons of Hungarian nationality on the ground of their race, sex, language or religion, whether in reference to their persons, property, business, professional or financial interest, status, political or civil rights or any other matter.

Article 3

Hungary, which in accordance with the Armistice Agreement has taken measures to set free, irrespective of citizenship and nationality, all persons held in confinement on account of their activities in favour of, or because of their sympathies with, the United Nations or because of their racial origin, and to repeal discriminatory legislation and restrictions imposed thereunder, shall complete these measures and shall in future not take any measures or enact any laws which would be incompatible with the purposes set forth in this Article.

Article 4

Hungary, which in accordance with the Armistice Agreement has taken measures for dissolving all organisations of a Fascist type on Hungarian territory, whether political, military or para-military, as well as other organisations conducting propaganda, including revisionist propaganda, hostile to the United Nations, shall not permit in future the existence and activities of organisations of that nature which have as their aim denial to the people of their democratic rights.

Article 5

1. Hungary shall enter into negotiations with Czechoslovakia in order to solve the problem of those inhabitants of Magyar ethnic origin, residing in Czechoslovakia, who will not be settled in Hungary in accordance with the provisions of the Agreement of February 27, 1946, on exchange of populations.

2. Should no agreement be reached within a period of six months from the coming into force of the present Treaty, Czechoslovakia shall have the right to bring this question before the Council of Foreign Ministers and to request the assistance of the Council in effecting a final solution.

Article 6

1. Hungary shall take all necessary steps to ensure the apprehension and surrender for trial of:

(a) Persons accused of having committed, ordered or abetted war crimes and crimes against peace or humanity;

(b) Nationals of any Allied or Associated Power accused of having violated their national law by treason or collaboration with the enemy during the war.

2. At the request of the United Nations Government concerned, Hungary shall likewise make available as witnesses persons within its jurisdiction, whose evidence is required for the trial of the persons referred to in paragraph 1 of this Article.

3. Any disagreement concerning the application of the provisions of paragraphs 1 and 2 of this Article shall be referred by any of the Governments concerned to the Heads of the Diplomatic Missions in Budapest of the Soviet Union, the United Kingdom and the United States of America, who will reach agreement with regard to the difficulty.

SECTION II

Article 7

Hungary undertakes to recognise the full force of the Treaties of Peace with Italy, Roumania, Bulgaria and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace.

Article 8

The state of war between Hungary and Roumania shall terminate upon the coming into force both of the present Treaty of Peace and the Treaty of Peace between the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia, India, New Zealand, the Ukrainian Soviet Socialist Republic and the Union of South Africa, of the one part, and Roumania of the other part.

Article 9

Hungary undertakes to accept any arrangements which have been or may be agreed for the liquidation of the League of Nations and the Permanent Court of International Justice.

Article 10

1. Each Allied or Associated Power will notify Hungary, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Hungary it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.

2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

3. All such treaties not so notified shall be regarded as abrogated.

Article 11

1. Hungary shall hand over to Yugoslavia and to Czechoslovakia, within a period of not more than eighteen months from the coming into force of the present Treaty, objects of the following categories constituting the cultural heritage of Yugoslavia and Czechoslovakia which originated in those territories and which, after 1848, came into the possession of the Hungarian State or of Hungarian public institutions as a consequence of Hungarian domination over those territories prior to 1919:

(a) Historical archives which came into being as integral wholes in Yugoslav or Czechoslovak territories;

(b) Libraries, historical documents, antiquities and other cultural objects which belonged to the institutions on Yugoslav or Czechoslovak territories or to historical personalities of the Yugoslav and Czechoslovak peoples;

(c) Original artistic, literary and scientific objects which are the work of Yugoslav or Czechoslovak artists, writers and scientists.

2. Objects acquired by purchase, gift or legacy and original works of Hungarians are excluded from the provisions of paragraph 1.

3. Hungary shall also hand over to Yugoslavia the archives of the Illyrian Deputation, the Illyrian Commission and Illyrian Chancellery, which relate to the 18th century.

4. The Hungarian Government shall, on the coming into force of the present Treaty, give the authorised representatives of Yugoslavia and Czechoslovakia all necessary assistance in finding these objects and making them available for examination. Thereafter, but no later than one year from the coming into force of the present Treaty, the Yugoslav and Czechoslovak Governments shall hand the Hungarian Government a list of the objects claimed under this Article. Should the Hungarian Government, within three months of the receipt of the list, raise objection to the inclusion therein of any objects, and should no agreement be reached between the Governments concerned within a further month, the dispute shall be settled in accordance with the provisions of Article 40 of the present Treaty.

PART III

MILITARY AND AIR CLAUSES

SECTION I

Article 12

The maintenance of land and air armaments and fortifications shall be closely restricted to meeting tasks of an internal character and local defence of frontiers. In accordance with the foregoing, Hungary is authorized to have armed forces consisting of not more than:

(a) A land army, including frontier troops, anti-aircraft and river flotilla personnel, with a total strength of 65,000 personnel;

(b) An air force of 90 aircraft, including reserves, of which not more than 70 may be combat types of aircraft, with a total personnel strength of 5,000. Hungary shall not possess or acquire any aircraft designed primarily as bombers with internal bomb-carrying facilities.

These strengths shall in each case include combat, service and overhead personnel.

Article 13

The personnel of the Hungarian Army and Air Force in excess of the respective strengths permitted under Article 12 shall be disbanded within six months from the coming into force of the present Treaty.

Article 14

Personnel not included in the Hungarian Army or Air Force shall not receive any form of military training or military air training as defined in Annex II.

Article 15

Hungary shall not possess, construct or experiment with any atomic weapon, any self-propelled or guided missiles or apparatus connected with their discharge (other than torpedoes and torpedo launching gear comprising the normal armament of naval vessels permitted by the present Treaty), sea mines or torpedoes of non-contact types actuated by influence mechanisms, torpedoes capable of being manned, submarines or other submersible craft, motor torpedo boats, or specialised types of assault craft.

Article 16

Hungary shall not retain, produce or otherwise acquire, or maintain facilities for the manufacture of, war material in excess of that required for the maintenance of the armed forces permitted under Article 12 of the present Treaty.

Article 17

1. Excess war material of Allied origin shall be placed at the disposal of the Allied or Associated Power concerned according to the instructions given by that Power. Excess Hungarian war material shall be placed at the disposal of the Governments of the Soviet Union, the United Kingdom and the United States of America. Hungary shall renounce all rights to this material.

2. War material of German origin or design in excess of that required for the armed forces permitted under the present Treaty shall be placed at the disposal of the Three Governments. Hungary shall not acquire or manufacture any war material of German origin or design, or employ or train any technicians, including military and civil aviation personnel, who are or have been nationals of Germany.

3. Excess war material mentioned in paragraphs 1 and 2 of this Article shall be handed over or destroyed within one year from the coming into force of the present Treaty.

4. A definition and list of war material for the purposes of the present Treaty are contained in Annex III.

Article 18

Hungary shall co-operate fully with the Allied and Associated Powers with a view to ensuring that Germany may not be able to take steps outside German territory towards rearmament.

Article 19

Hungary shall not acquire or manufacture civil aircraft which are of German or Japanese design or which embody major assemblies of German or Japanese manufacture or design.

Article 20

Each of the military and air clauses of the present Treaty shall remain in force until modified in whole or in part by agreement between the Allied and Associated Powers and Hungary or, after Hungary becomes a member of the United Nations, by agreement between the Security Council and Hungary.

SECTION II

Article 21

1. Hungarian prisoners of war shall be repatriated as soon as possible, in accordance with arrangements agreed upon by the individual Powers detaining them and Hungary.

2. All costs, including maintenance costs, incurred in moving Hungarian prisoners of war from their respective assembly points, as chosen by the Government of the Allied or Associated Power concerned, to the point of their entry into Hungarian territory, shall be borne by the Hungarian Government.

PART IV

WITHDRAWAL OF ALLIED FORCES

Article 22

1. Upon the coming into force of the present Treaty, all Allied forces shall, within a period of 90 days, be withdrawn from Hungary, subject to the right of the Soviet Union to keep on Hungarian territory such armed forces as it may need for the maintenance of the lines of communication of the Soviet Army with the Soviet zone of occupation in Austria.

2. All unused Hungarian currency and all Hungarian goods in possession of the Allied forces in Hungary, acquired pursuant to Article 11 of the Armistice Agreement, shall be returned to the Hungarian Government within the same period of 90 days.

3. Hungary shall, however, make available such maintenance and facilities as may specifically be required for the maintenance of the lines of communication with the Soviet zone of occupation in Austria, for which due compensation will be made to the Hungarian Government.

PART V

REPARATION AND RESTITUTION

Article 23

1. Losses caused to the Soviet Union, Czechoslovakia and Yugoslavia by military operations and by the occupation by Hungary of the territories of these States shall be made good by Hungary to the Soviet Union, Czechoslovakia and Yugoslavia, but, taking into consideration that Hungary has not only withdrawn from the war against the United Nations, but has also declared war on Germany, the Parties agree that compensation for the above losses will be made by Hungary not in full but only in part, namely in the amount of \$300,000,000 payable over eight years from January 20, 1945, in commodities (machine equipment, river craft, grain and other commodities), the sum to be paid to the Soviet Union to amount to \$200,000,000, and the sum to be paid to Czechoslovakia and Yugoslavia to amount to \$100,000,000.

2. The basis of calculation for the settlement provided in this Article will be the United States dollar at its gold parity on the day of the signing of the Armistice Agreement, i.e. \$35 for one ounce of gold.

Article 24

1. Hungary accepts the principles of the United Nations Declaration of January 5, 1943, and shall return, in the shortest possible time, property removed from the territory of any of the United Nations.

2. The obligation to make restitution applies to all identifiable property at present in Hungary which was removed by force or duress by any of the Axis Powers from the territory of any of the United Nations, irrespective of any subsequent transactions by which the present holder of any such property has secured possession.

3. If, in particular cases, it is impossible for Hungary to make restitution of objects of artistic, historic or archaeological value, belonging to the cultural heritage of the United Nation from whose territory such objects were removed by force or duress by Hungarian forces, authorities or nationals, Hungary shall transfer to the United Nation concerned objects of the same kind as, and of approximately equivalent value to, the objects removed, in so far as such objects are obtainable in Hungary.

4. The Hungarian Government shall return the property referred to in this Article in good order and, in this connection, shall bear all costs in Hungary relating to labour, materials and transport.

5. The Hungarian Government shall co-operate with the United Nations in, and shall provide at its own expense all necessary facilities for, the search for and restitution of property liable to restitution under this Article.

6. The Hungarian Government shall take the necessary measures to effect the return of property covered by this Article held in any third country by persons subject to Hungarian jurisdiction.

7. Claims for the restitution of property shall be presented to the Hungarian Government by the Government of the country from whose territory the property was removed, it being understood that rolling stock shall be regarded as having been removed from the territory to which it originally belonged. The period during which such claims may be presented shall be six months from the coming into force of the present Treaty.

8. The burden of identifying the property and of proving ownership shall rest on the claimant Government, and the burden of proving that the property was not removed by force or duress shall rest on the Hungarian Government.

Article 25

The annulment of the Vienna Award of November 2, 1938, as provided in Article 1, paragraph 4, of the present Treaty, shall entail the annulment of the agreements, as well as the legal consequences ensuing therefrom, relating to matters of finance and public and private insurance, concluded between or on behalf of the two States concerned or between Czechoslovak and Hungarian juridical persons on the basis of the Vienna Award and in

respect of the material handed over in accordance with the Protocol of May 22, 1940. This annulment shall not apply in any way to relations between physical persons. The details of the above-mentioned settlement shall be arranged by bilateral agreements between the Governments concerned, within a period of six months from the coming into force of the present Treaty.

PART VI

ECONOMIC CLAUSES.

Article 26

1. In so far as Hungary has not already done so, Hungary shall restore all legal rights and interests in Hungary of the United Nations and their nationals as they existed on September 1, 1939, and shall return all property in Hungary of the United Nations and their nationals as it now exists.

2. The Hungarian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Hungarian Government in connection with their return. The Hungarian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between September 1, 1939, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Hungarian authorities not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Hungarian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

In the case of Czechoslovak nationals, this paragraph shall also include transfers after November 2, 1938, which resulted from force or duress or from measures taken under discriminatory internal legislation by the Hungarian Government or its agencies in Czechoslovak territory annexed by Hungary.

4. (a) The Hungarian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Hungary, he shall receive from the Hungarian Government compensation in Hungarian currency to the extent of two-thirds of the sum necessary, at the

date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Hungarian nationals.

(b) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 9 (a) of this Article, but which have suffered a loss by reason of injury or damage to property in Hungary, shall receive compensation in accordance with sub-paragraph (a) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(c) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Hungary but shall be subject to the foreign exchange control regulations which may be in force in Hungary from time to time.

(d) The Hungarian Government shall accord to United Nations nationals the same treatment in the allocation of materials for the repair or rehabilitation of their property in Hungary and in the allocation of foreign exchange for the importation of such materials as applies to Hungarian nationals.

(e) The Hungarian Government shall grant United Nations nationals an indemnity in Hungarian currency at the same rate as provided in sub-paragraph (a) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Hungarian property. This sub-paragraph does not apply to a loss of profit.

5. The provisions of paragraph 4 of this Article shall apply to Hungary in so far as the action which may give rise to a claim for damage to property in Northern Transylvania belonging to the United Nations or their nationals took place during the period when this territory was subject to Hungarian authority.

6. All reasonable expenses incurred in Hungary in establishing claims, including the assessment of loss or damage, shall be borne by the Hungarian Government.

7. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Hungary by the Hungarian Government or any Hungarian authority between the date of the Armistice and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

8. The owner of the property concerned and the Hungarian Government may agree upon arrangements in lieu of the provisions of this Article.

9. As used in this Article:

(a) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Hungary.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Hungary during the war, have been treated as enemy;

(b) "Owner" means the United Nation, or the United Nations national as defined in sub-paragraph (a) above, entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nation, or a United Nations national as defined in sub-paragraph (a). If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(c) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property.

10. The Hungarian Government recognizes that the Brioni Agreement of August 10, 1942, is null and void. It undertakes to participate with the other signatories of the Rome Agreement of May 29, 1923, in any negotiations having the purpose of introducing into its provisions the modifications necessary to ensure the equitable settlement of the annuities which it provides.

Article 27

1. Hungary undertakes that in all cases where the property, legal rights or interests in Hungary of persons under Hungarian jurisdiction have, since September 1, 1939, been the subject of measures of sequestration, confiscation or control on account of the racial origin or religion of such persons, the said property, legal rights and interests shall be restored together with their accessories or, if restoration is impossible, that fair compensation shall be made therefor.

2. All property, rights and interests in Hungary of persons, organisations or communities which, individually or as members of groups, were the object of racial, religious or other Fascist measures of persecution, and remaining heirless or unclaimed for six months after the coming into force of the present Treaty, shall be transferred by the Hungarian Government to organisations in Hungary representative of such persons, organisations

or communities. The property transferred shall be used by such organisations for purposes of relief and rehabilitation of surviving members of such groups, organisations and communities in Hungary. Such transfer shall be effected within twelve months from the coming into force of the Treaty, and shall include property, rights and interests required to be restored under paragraph 1 of this Article.

Article 28

Hungary recognizes that the Soviet Union is entitled to all German assets in Hungary transferred to the Soviet Union by the Control Council for Germany and undertakes to take all necessary measures to facilitate such transfers.

Article 29

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Hungary or to Hungarian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Hungary or Hungarian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Hungarian property, or the proceeds thereof, in excess of the amount of such claims shall be returned.

2. The liquidation and disposition of Hungarian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Hungarian owner shall have no rights with respect to such property except those which may be given him by that law.

3. The Hungarian Government undertakes to compensate Hungarian nationals whose property is taken under this Article and not returned to them.

4. No obligation is created by this Article on any Allied or Associated Power to return industrial property to the Hungarian Government or Hungarian nationals, or to include such property in determining the amounts which may be retained under paragraph 1 of this Article. The Government of each of the Allied and Associated Powers shall have the right to impose such limitations, conditions and restrictions on rights or interests with respect to industrial property in the territory of that Allied or Associated Power, acquired prior to the coming into force of the present Treaty by the Government or nationals of Hungary, as may be deemed by the Government of the Allied or Associated Power to be necessary in the national interest.

5. The property covered by paragraph 1 of this Article shall be deemed to include Hungarian property which has been subject to control by reason

of a state of war existing between Hungary and the Allied or Associated Power having jurisdiction over the property, but shall not include:

(a) Property of the Hungarian Government used for consular or diplomatic purposes;

(b) Property belonging to religious bodies or private charitable institutions and used for religious or charitable purposes;

(c) Property of natural persons who are Hungarian nationals permitted to reside within the territory of the country in which the property is located or to reside elsewhere in United Nations territory, other than Hungarian property which at any time during the war was subjected to measures not generally applicable to the property of Hungarian nationals resident in the same territory;

(d) Property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and Hungary, or arising out of transactions between the Government of any Allied or Associated Power and Hungary since January 20, 1945;

(e) Literary and artistic property rights.

Article 30

1. From the coming into force of the present Treaty, property in Germany of Hungary and of Hungarian nationals shall no longer be treated as enemy property and all restrictions based on such treatment shall be removed.

2. Identifiable property of Hungary and of Hungarian nationals removed by force or duress from Hungarian territory to Germany by German forces or authorities after January 20, 1945, shall be eligible for restitution.

3. The restoration and restitution of Hungarian property in Germany shall be effected in accordance with measures which will be determined by the Powers in occupation of Germany.

4. Without prejudice to these and to any other dispositions in favour of Hungary and Hungarian nationals by the Powers occupying Germany, Hungary waives on its own behalf and on behalf of Hungarian nationals all claims against Germany and German nationals outstanding on May 8, 1945, except those arising out of contracts and other obligations entered into, and rights acquired, before September 1, 1939. This waiver shall be deemed to include debts, all inter-governmental claims in respect of arrangements entered into in the course of the war and all claims for loss or damage arising during the war.

Article 31

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming

into force of the present Treaty, and which are due by the Government or nationals of Hungary to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Hungary.

2. Except as otherwise expressly provided in the present Treaty, nothing therein shall be construed as impairing debtor-creditor relationships arising out of pre-war contracts concluded either by the Government or nationals of Hungary.

Article 32

1. Hungary waives all claims of any description against the Allied and Associated Powers on behalf of the Hungarian Government or Hungarian nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Hungary at the time, including the following:

(a) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(b) Claims arising from the presence, operations or actions of forces or authorities of Allied or Associated Powers in Hungarian territory;

(c) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Hungary agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Hungarian ships or Hungarian goods or the payment of costs;

(d) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Hungarian Government agrees to make equitable compensation in Hungarian currency to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Hungarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Hungarian territory.

3. Hungary likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Hungarian Government or Hungarian nationals against any of the United Nations whose diplomatic relations with Hungary were broken off during the war and which took action in co-operation with the Allied and Associated Powers.

4. The Hungarian Government shall assume full responsibility for all

- Allied military currency issued in Hungary by the Allied military authori-

ties, including all such currency in circulation at the coming into force of the present Treaty.

5. The waiver of claims by Hungary under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Hungarian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

Article 33

1. Pending the conclusion of commercial treaties or agreements between individual United Nations and Hungary, the Hungarian Government shall, during a period of eighteen months from the coming into force of the present Treaty, grant the following treatment to each of the United Nations which, in fact, reciprocally grants similar treatment in like matters to Hungary:

(a) In all that concerns duties and charges on importation or exportation, the internal taxation of imported goods and all regulations pertaining thereto, the United Nations shall be granted unconditional most-favoured-nation treatment;

(b) In all other respects, Hungary shall make no arbitrary discrimination against goods originating in or destined for any territory of any of the United Nations as compared with like goods originating in or destined for territory of any other of the United Nations or of any other foreign country;

(c) United Nations nationals, including juridical persons, shall be granted national and most-favoured-nation treatment in all matters pertaining to commerce, industry, shipping and other forms of business activity within Hungary. These provisions shall not apply to commercial aviation;

(d) Hungary shall grant no exclusive or discriminatory right to any country with regard to the operation of commercial aircraft in international traffic, shall afford all the United Nations equality of opportunity in obtaining international commercial aviation rights in Hungarian territory, including the right to land for refueling and repair, and, with regard to the operation of commercial aircraft in international traffic, shall grant on a reciprocal and non-discriminatory basis to all United Nations the right to fly over Hungarian territory without landing. These provisions shall not affect the interests of the national defence of Hungary.

2. The foregoing undertakings by Hungary shall be understood to be subject to the exceptions customarily included in commercial treaties concluded by Hungary before the war, and the provisions with respect to reciprocity granted by each of the United Nations shall be understood to be subject to the exceptions customarily included in the commercial treaties concluded by that State.

Article 34

Hungary shall facilitate as far as possible railway traffic in transit through its territory at reasonable rates and shall negotiate with neighbouring States all reciprocal agreements necessary for this purpose.

Article 35

1. Any disputes which may arise in connection with Articles 24, 25 and 26 and Annexes IV, V and VI of the present Treaty shall be referred to a Conciliation Commission composed of an equal number of representatives of the United Nations Government concerned and of the Hungarian Government. If agreement has not been reached within three months of the dispute having been referred to the Conciliation Commission, either Government may require the addition of a third member to the Commission, and failing agreement between the two Governments on the selection of this member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission and shall be accepted by the parties as definitive and binding.

Article 36

Articles 24, 26, 33 and Annex VI of the present Treaty shall apply to the Allied and Associated Powers and France and to those of the United Nations whose diplomatic relations with Hungary have been broken off during the war.

Article 37

The provisions of Annexes IV, V and VI, shall, as in the case of the other Annexes, have force and effect as integral parts of the present Treaty.

PART VII**CLAUSE RELATING TO THE DANUBE***Article 38*

Navigation on the Danube shall be free and open for the nationals, vessels of commerce, and goods of all States, on a footing of equality in regard to port and navigation charges and conditions for merchant shipping. The foregoing shall not apply to traffic between ports of the same State.

PART VIII

FINAL CLAUSES

Article 39

1. For a period not to exceed eighteen months from the coming into force of the present Treaty, the Heads of the Diplomatic Missions in Budapest of the Soviet Union, the United Kingdom and the United States of America, acting in concert, will represent the Allied and Associated Powers in dealing with the Hungarian Government in all matters concerning the execution and interpretation of the present Treaty.

2. The Three Heads of Mission will give the Hungarian Government such guidance, technical advice and clarification as may be necessary to ensure the rapid and efficient execution of the present Treaty both in letter and in spirit.

3. The Hungarian Government shall afford the said Three Heads of Mission all necessary information and any assistance which they may require in the fulfilment of the tasks devolving on them under the present Treaty.

Article 40

1. Except where another procedure is specifically provided under any Article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the Three Heads of Mission acting under Article 39, except that in this case the Heads of Mission will not be restricted by the time limit provided in that Article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding.

Article 41

1. Any member of the United Nations, not a signatory to the present Treaty, which is at war with Hungary, may accede to the Treaty and upon accession shall be deemed to be an Associated Power for the purposes of the Treaty.

2. Instruments of accession shall be deposited with the Government of the Union of Soviet Socialist Republics and shall take effect upon deposit.

Article 42

The present Treaty, of which the Russian and English texts are authentic, shall be ratified by the Allied and Associated Powers. It shall also be ratified by Hungary. It shall come into force immediately upon the deposit of ratifications by the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The instruments of ratification shall, in the shortest time possible, be deposited with the Government of the Union of Soviet Socialist Republics.

With respect to each Allied or Associated Power whose instrument of ratification is thereafter deposited, the Treaty shall come into force upon the date of deposit. The present Treaty shall be deposited in the archives of the Government of the Union of Soviet Socialist Republics, which shall furnish certified copies to each of the signatory States.

LIST OF ANNEXES

- I. Maps of Hungarian Frontiers
- II. Definition of Military and Military Air Training
- III. Definition and list of war material
- IV. Special provisions relating to certain kinds of property:
 - A. Industrial, Literary and Artistic Property
 - B. Insurance
- V. Contracts, Prescription and Negotiable Instruments
- VI. Judgments

ANNEX I

(See Article 1)

Maps

- I. Hungarian Frontiers
- IA. Rectification of the Hungarian-Czechoslovak Frontier

ANNEX II

(See Article 14)

Definition of Military and Military Air Training

1. Military training is defined as: the study of and practice in the use of war material specially designed or adapted for army purposes, and training devices relative thereto; the study and carrying out of all drill or

movements which teach or practice evolutions performed by fighting forces in battle; and the organised study of tactics, strategy and staff work.

2. Military air training is defined as: the study of and practice in the use of war material specially designed or adapted for air force purposes, and training devices relative thereto; the study and practice of all specialised evolutions, including formation flying, performed by aircraft in the accomplishment of an air force mission; and the organised study of air tactics, strategy and staff work.

ANNEX III

(See Article 17)

Definition and List of War Material

The term "war material" as used in the present Treaty shall include all arms, ammunition and implements specially designed or adapted for use in war as listed below.

The Allied and Associated Powers reserve the right to amend the list periodically by modification or addition in the light of subsequent scientific development.

Category I

1. Military rifles, carbines, revolvers and pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use.

2. Machine guns, military automatic or autoloading rifles, and machine pistols; barrels for these weapons and other spare parts not readily adaptable for civilian use; machine gun mounts.

3. Guns, howitzers, mortars, cannon special to aircraft; breechless or recoil-less guns and flamethrowers; barrels and other spare parts not readily adaptable for civilian use; carriages and mountings for the foregoing.

4. Rocket projectors; launching and control mechanisms for self-propelling and guided missiles; mountings for same.

5. Self-propelling and guided missiles, projectiles, rockets, fixed ammunition and cartridges, filled or unfilled, for the arms listed in subparagraphs 1-4 above and fuses, tubes or contrivances to explode or operate them. Fuses required for civilian use are not included.

6. Grenades, bombs, torpedoes, mines, depth charges and incendiary materials or charges, filled or unfilled; all means for exploding or operating them. Fuses required for civilian use are not included.

7. Bayonets.

Category II

1. Armoured fighting vehicles; armoured trains, not technically convertible to civilian use.
2. Mechanical and self-propelled carriages for any of the weapons listed in Category I; special type military chassis or bodies other than those enumerated in sub-paragraph 1 above.
3. Armour plate, greater than three inches in thickness, used for protective purposes in warfare.

Category III

1. Aiming and computing devices, including predictors and plotting apparatus, for fire control; direction of fire instruments; gun sights; bomb sights; fuse setters; equipment for the calibration of guns and fire control instruments.
2. Assault bridging, assault boats and storm boats.
3. Deceptive warfare, dazzle and decoy devices.
4. Personal war equipment of a specialised nature not readily adaptable to civilian use.

Category IV

1. Warships of all kinds, including converted vessels and craft designed or intended for their attendance or support, which cannot be technically reconverted to civilian use, as well as weapons, armour, ammunition, aircraft and all other equipment, material, machines and installations not used in peace time on ships other than warships.
2. Landing craft and amphibious vehicles or equipment of any kind; assault boats or devices of any type as well as catapults or other apparatus for launching or throwing aircraft, rockets, propelled weapons or any other missile, instrument or device whether manned or unmanned, guided or uncontrolled.
3. Submersible or semi-submersible ships, craft, weapons, devices or apparatus of any kind, including specially designed harbour defence booms, except as required by salvage, rescue or other civilian uses, as well as all equipment, accessories, spare parts, experimental or training aids, instruments or installations as may be specially designed for the construction, testing, maintenance or housing of the same.

Category V

1. Aircraft, assembled or unassembled, both heavier and lighter than air, which are designed or adapted for aerial combat by the use of machine guns, rocket projectors or artillery or for the carrying and dropping of bombs, or which are equipped with, or which by reason of their design or

construction are prepared for, any of the appliances referred to in subparagraph 2 below.

2. Aerial gun mounts and frames, bomb racks, torpedo carriers and bomb release or torpedo release mechanisms; gun turrets and blisters.

3. Equipment specially designed for and used solely by airborne troops.

4. Catapults or launching apparatus for ship-borne, land- or sea-based aircraft; apparatus for launching aircraft weapons.

5. Barrage balloons.

Category VI

Asphyxiating, lethal, toxic or incapacitating substances intended for war purposes, or manufactured in excess of civilian requirements.

Category VII

Propellants, explosives, pyrotechnics or liquefied gases destined for the propulsion, explosion, charging or filling of, or for use in connection with, the war material in the present categories, not capable of civilian use or manufactured in excess of civilian requirements.

Category VIII

Factory and tool equipment specially designed for the production and maintenance of the material enumerated above and not technically convertible to civilian use.

ANNEX IV

Special Provisions Relating to Certain Kinds of Property

A. INDUSTRIAL, LITERARY AND ARTISTIC PROPERTY

1. (a) A period of one year from the coming into force of the present Treaty shall be accorded to the Allied and Associated Powers and their nationals without extension fees or other penalty of any sort in order to enable them to accomplish all necessary acts for the obtaining or preserving in Hungary of rights in industrial, literary and artistic property which were not capable of accomplishment owing to the existence of a state of war.

(b) Allied and Associated Powers or their nationals who had duly applied in the territory of any Allied or Associated Power for a patent or registration of a utility model not earlier than twelve months before the outbreak of the war with Hungary or during the war, or for the registration of an industrial design or model or trade mark not earlier than six months before the outbreak of the war with Hungary or during the war, shall be entitled within twelve months after the coming into force of the present •

Treaty to apply for corresponding rights in Hungary, with a right of priority based upon the previous filing of the application in the territory of that Allied or Associated Power.

(c) Each of the Allied and Associated Powers and its nationals shall be accorded a period of one year from the coming into force of the present Treaty during which they may institute proceedings in Hungary against those natural or juridical persons who are alleged illegally to have infringed their rights in industrial, literary or artistic property between the date of the outbreak of the war and the coming into force of the Treaty.

2. A period from the outbreak of the war until a date eighteen months after the coming into force of the present Treaty shall be excluded in determining the time within which a patent must be worked or a design or trade mark used.

3. The period from the outbreak of the war until the coming into force of the present Treaty shall be excluded from the normal term of rights in industrial, literary and artistic property which were in force in Hungary at the outbreak of the war or which are recognized or established under part A of this Annex and belong to any of the Allied and Associated Powers or their nationals. Consequently, the normal duration of such rights shall be deemed to be automatically extended in Hungary for a further term corresponding to the period so excluded.

4. The foregoing provisions concerning the rights in Hungary of the Allied and Associated Powers and their nationals shall apply equally to the rights in the territories of the Allied and Associated Powers of Hungary and its nationals. Nothing, however, in these provisions shall entitle Hungary or its nationals to more favourable treatment in the territory of any of the Allied and Associated Powers than is accorded by such Power in like cases to other United Nations or their nationals, nor shall Hungary be thereby required to accord to any of the Allied and Associated Powers or its nationals more favourable treatment than Hungary or its nationals receive in the territory of such Power in regard to the matters dealt with in the foregoing provisions.

5. Third parties in the territories of any of the Allied and Associated Powers or Hungary who, before the coming into force of the present Treaty, had bona fide acquired industrial, literary or artistic property rights conflicting with rights restored under part A of this Annex or with rights obtained with the priority provided thereunder, or had bona fide manufactured, published, reproduced, used or sold the subject matter of such rights, shall be permitted, without any liability for infringement, to continue to exercise such rights and to continue or to resume such manufacture, publication, reproduction, use or sale which had been bona fide acquired or commenced. In Hungary, such permission shall take the form of a non-exclusive license • granted on terms and conditions to be mutually agreed by the parties thereto or, in default of agreement, to be fixed by the Conciliation Commis-

sion established under Article 35 of the present Treaty. In the territories of each of the Allied and Associated Powers, however, bona fide third parties shall receive such protection as is accorded under similar circumstances to bona fide third parties whose rights are in conflict with those of the nationals of other Allied and Associated Powers.

6. Nothing in part A of this Annex shall be construed to entitle Hungary or its nationals to any patent or utility model rights in the territory of any of the Allied and Associated Powers with respect to inventions, relating to any article listed by name in Annex III of the present Treaty, made, or upon which applications were filed, by Hungary, or any of its nationals, in Hungary or in the territory of any other of the Axis Powers, or in any territory occupied by the Axis forces, during the time when such territory was under the control of the forces or authorities of the Axis Powers.

7. Hungary shall likewise extend the benefits of the foregoing provisions of this Annex to France, and to other United Nations which are not Allied or Associated Powers, whose diplomatic relations with Hungary have been broken off during the war and which undertake to extend to Hungary the benefits accorded to Hungary under the said provisions.

8. Nothing in part A of this Annex shall be understood to conflict with Articles 26, 29, and 31 of the present Treaty.

B. INSURANCE

1. No obstacles, other than any applicable to insurers generally, shall be placed in the way of the resumption by insurers who are United Nations nationals of their former portfolios of business.

2. Should an insurer, who is a national of any of the United Nations, wish to resume his professional activities in Hungary, and should the value of the guarantee deposits or reserves required to be held as a condition of carrying on business in Hungary be found to have decreased as a result of the loss or depreciation of the securities which constituted such deposits or reserves, the Hungarian Government undertakes to accept, for a period of eighteen months, such securities as still remain as fulfilling any legal requirements in respect of deposits and reserves.

ANNEX V

Contracts, Prescription and Negotiable Instruments

A. CONTRACTS

1. Any contract which required for its execution intercourse between any of the parties thereto having become enemies as defined in part D of this Annex, shall, subject to the exceptions set out in paragraphs 2 and 3 below, be deemed to have been dissolved as from the time when any of

the parties thereto became enemies. Such dissolution, however, is without prejudice to the provisions of Article 31 of the present Treaty, nor shall it relieve any party to the contract from the obligation to repay amounts received as advances or as payments on account and in respect of which such party has not rendered performance in return.

2. Notwithstanding the provisions of paragraph 1 above, there shall be excepted from dissolution and, without prejudice to the rights contained in Article 29 of the present Treaty, there shall remain in force such parts of any contract as are severable and did not require for their execution intercourse between any of the parties thereto, having become enemies as defined in part D of this Annex. Where the provisions of any contract are not so severable, the contract shall be deemed to have been dissolved in its entirety. The foregoing shall be subject to the application of domestic laws, orders or regulations made by any of the Allied and Associated Powers having jurisdiction over the contract or over any of the parties thereto and shall be subject to the terms of the contract.

3. Nothing in part A of this Annex shall be deemed to invalidate transactions lawfully carried out in accordance with a contract between enemies if they have been carried out with the authorization of the Government of one of the Allied and Associated Powers.

4. Notwithstanding the foregoing provisions, contracts of insurance and re-insurance shall be subject to separate agreements between the Government of the Allied or Associated Power concerned and the Government of Hungary.

B. PERIODS OF PRESCRIPTION

1. All periods of prescription or limitation of right of action or of the right to take conservatory measures in respect of relations affecting persons or property, involving United Nations nationals and Hungarian nationals who, by reason of the state of war, were unable to take judicial action or to comply with the formalities necessary to safeguard their rights, irrespective of whether these periods commenced before or after the outbreak of war, shall be regarded as having been suspended, for the duration of the war, in Hungarian territory on the one hand, and on the other hand in the territory of those United Nations which grant to Hungary, on a reciprocal basis, the benefit of the provisions of this paragraph. These periods shall begin to run again on the coming into force of the present Treaty. The provisions of this paragraph shall be applicable in regard to the periods fixed for the presentation of interest or dividend coupons or for the presentation for payment of securities drawn for repayment or repayable on any other ground.

2. Where, on account of failure to perform any act or to comply with any formality during the war, measures of execution have been taken in

Hungarian territory to the prejudice of a national of one of the United Nations, the Hungarian Government shall restore the rights which have been detrimentally affected. If such restoration is impossible or would be inequitable, the Hungarian Government shall provide that the United Nations national shall be afforded such relief as may be just and equitable in the circumstances.

C. NEGOTIABLE INSTRUMENTS

1. As between enemies, no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment, or to give notice of non-acceptance or non-payment to drawers or endorsers, or to protest the instrument, nor by reason of failure to complete any formality during the war.

2. Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or endorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment, or protest may be made.

3. If a person has, either before or during the war, incurred obligations under a negotiable instrument in consequence of an undertaking given to him by a person who has subsequently become an enemy, the latter shall remain liable to indemnify the former in respect of these obligations, notwithstanding the outbreak of war.

D. SPECIAL PROVISIONS

1. For the purposes of this Annex, natural or juridical persons shall be regarded as enemies from the date when trading between them shall have become unlawful under laws, orders or regulations to which such persons or the contracts were subject.

2. Having regard to the legal system of the United States of America, the provisions of this Annex shall not apply as between the United States of America and Hungary.

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